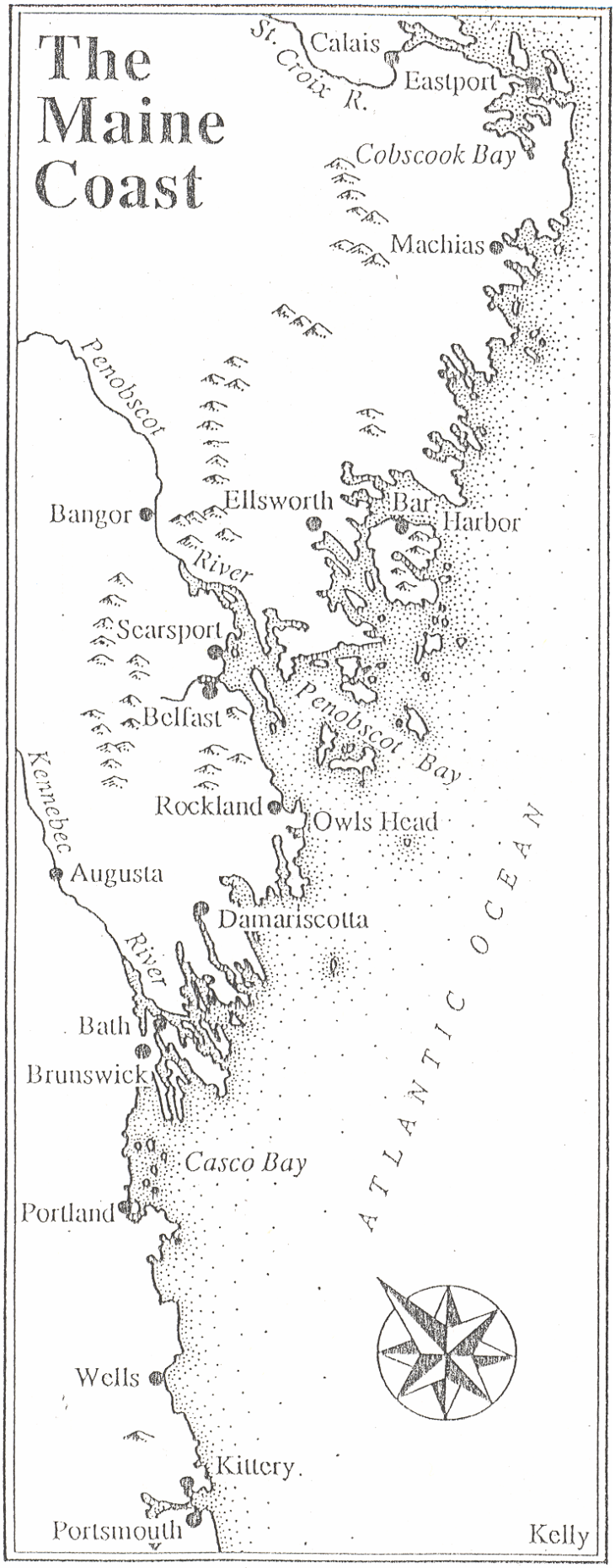
Maine's Shore Access Public Access Series

Coastal Right-of-Way Rediscovery Programs

Maine State Planning Office
Maine Coastal Program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Coastal Right-of-Way Rediscovery Programs:

A Handbook for Local Researchers

Maine State Planning Office
Maine Coastal Program

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Table of Contents

Appendices

Preface

The problem of securing access to Maine's coastal shoreline is growing increasingly critical. Insufficient coastal access use to be of concern only to new residents, tourists, and people who made their living from the visitor and tourism industry. It was not usually a concern of long-time residents, however, because they knew of several traditional, locally used places where they could go to clam, launch a boat, swim or gaze at the ocean. Informal, unwritten agreements, local custom or traditional patterns of usage seemed to satisfy the local demand for access.

But in many communities, over the last fifteen years, one by one, many of those traditional access points have been built upon, fenced off, posted or purchased by new owners who are unwilling to allow old patterns of usage continue. Other traditional access points may still be in use, but conflicts with owners and threats of closure are becoming more common. The lack of official, legal public access points is now very clearly not just a problem for "people from away" and tourists. It is becoming a pressing problem for long-time residents as well, especially for those who earn their livelihood from the water.

There are several interrelated causes of the problem. They include a loss of traditional maritime businesses which had afforded access to the water, the influx of new owners with different attitudes about community use of their land, the sharply increasing demand for shoreline access, and escalating coastal land prices.

Many communities that have not adopted strong protective zoning ordinances are experiencing the conversion of traditional maritime businesses to private, restricted access uses. For example, owners of land used for boat repair yards, small commercial marinas, chandleries and fish processing are frequently being enticed to sell to developers who want to build new shorefront houses of condominiums. Typically, attempts are made to reserve the berthing space and shoreline adjacent to these new developments for the residential owners. If not controlled by the community, this trend of residential uses replacing commercial uses can result in a loss of the types of maritime businesses which have traditionally provided significant access to the water for long-time residents.

In addition, new owners of coastal real estate (whether displacing traditional maritime uses of just purchasing existing older coastal houses) frequently bring with them a different concept of property ownership than those who owned the property previously. Informal, tacit agreements or vague claims of public rights of use have traditionally allowed those who needed access for fishing, clamming, worming and other livelihoods and neighbors who wanted recreational access to pass over private property to reach the shore. Whether there was an actual legal basis for the public usage or whether it was just local custom was of little concern to the landowners and users alike. Increasingly, the exact source of the public claim is becoming critical as long-time residents are finding their way blocked by new owners who will not voluntarily honor merely traditional use patterns.

But the access problems cannot be attributed exclusively to new development or new residents. The growth in coastal population, the surge in the popularity of the shore for recreational use, the emergence of new recreational uses such as windsurfing and jet skiing, and the number of nonresidents seeking access are causing even longtime coastal property owners to rethink their access policies. Tolerance of public use can be stretched to the breaking point if growing numbers of people try to use a decreasing supply of access ways.

The attempts to solve the problem caused by a decrease inn traditional access points and an increase in demand for access is made more difficult by escalating coastal land prices. While some significant efforts are being made at the state and local level to acquire additional public access to the shore, each year that the coastal development pressures continue, the harder it will be to finance the cost of acquisition of coastal property.

Most communities are finding that they have to pursue a multi-pronged strategy to meet their coastal access needs. Clearly, the most direct method would be for communities to just purchase the land that they need. That may be possible for a few key parcels, but most communities do not have sufficient financial resources to make land purchase the mainstay of their access program.

Another less expensive option is to solicit voluntary gifts of coastal land or easements for public use. These conveyances can make a great contribution to meeting public access needs, especially if a

community has done the planning necessary to identify important parcels and is able to secure gifts which are consistent with the comprehensive public access plan. While these gifts can be a tremendous asset, a community cannot rely solely on individual generosity of to meet its needs.

A critical third prong of the strategy is to inventory and safeguard what is already in the public domain. If the public still has legal rights to use certain access points, it is usually much more cost effective to research and assert those existing legal rights than it would be for the community to have to purchase those rights or similar rights all over again. Researching and reasserting existing but forgotten or uncertain public access rights is the focus of a **"Right-of-Way Rediscovery Program."**

This Handbook is designed as a citizens' guide to how to conduct a Right-of-Way Rediscovery Program. Part I outlines the steps involved in a typical rediscovery program. Part II summarizes current law that affects public rights in accessways.

Citizens can make a major contribution to documenting public rights of access if the research is done in a thorough and systematic manner. Frequently it would be prohibitively expensive for a town to hire an attorney or other professional to conduct the necessary research. Citizen researchers can do the basic investigation, narrow the issues, and come up with apparent evidence of public rights. However, since this Handbook contains only a summary of the law and laws do change over time, and volunteer researchers may not be infallible, it is imperative that towns have their own attorneys review the citizen research prior to the town taking any in reliance on the research. The steps and research materials included in this Handbook are designed to help researchers document their research in a way which will facilitate later review by an attorney.

Part I: How to Conduct a Coastal Right-of-Way Discovery Program

A. Introduction

A "Coastal Right-of-Way Rediscovery Program" is a systematic, local effort to "rediscover" already existing but uncertain, unused or forgotten legal rights of access to the shore. It involves inventorying possible access points, researching records to verify public rights, and then taking steps to assert and safeguard public access rights.

Several of Maine's coastal communities have undertaken this type of project. Volunteer researchers from nine towns (Cutler, Addison, Gouldsboro, Southwest Harbor, Sullivan, Thomaston, Camden, Rockport and Kennebunkport) participated in a Coastal Right-of-Way Rediscovery Project in the winter and spring of 1989 as part of a pilot program sponsored by the State Planning Office. The Marine Law Institute of the University of Maine, School of Law, provided technical assistance to the participating towns. This Handbook draws upon the findings and experience gained from that pilot project and the experience of similar efforts conducted in other Maine communities.

A right-of-way rediscovery program can be a low cost, but frequently labor intensive, way to increase the number of coastal access points. It can be used in combination with efforts to purchase additional access and to solicit voluntary donations or land or easements for access. It requires a small core of dedicated volunteers who are willing to spend time researching and documenting public rights.

Over the history of the community, public rights of access to the shore are likely to have been created in a variety of ways. For example, they might have been created through tax acquired parcels of land, purchase or laying out and acceptance of roads, dedication of roads by developers as part of a subdivision, or as a condition of approval on private development. Once created, some of these accessways may have been lost, almost abandoned or fallen into disuse. The goal of a Right-of-Way Rediscovery Program is to rediscover and, where possible, reassert public claims to legal accessways of record to the shore.

Through a Right-of-Way Rediscovery Program, communities may find that they do have public rights to forgotten but immediately useful public access sites. The research may also uncover parcels of publicly owned shorefront land or easements to the shore which may not be of immediate use, but which might have value as access sites in the future, or which could be traded or sold to obtain more appropriate public access sites. The success in uncovering forgotten public rights of record to the shore will depend, in large part, on the adequacy of the town's records and the degree to which the town officials have complied with legal formalities in conducting the town's business.

The process is not always simple. Researchers may have to investigate multiple sites to find one in which there are actual public rights of record. And even after public rights are discovered, sometimes it may be too late to make up for the lack of vigilance of a prior generation. For example, those public rights may have legally terminated as a result of long non-use, or fences or other structures that may have been encroaching on the way for so long that they have a right to remain. However, in other cases, even though forgotten for a period of time, the public rights can still be reasserted.

A Right-of-Way Rediscovery Program is also useful for confirming the legal status of traditionally used ways in which public rights are suspected but uncertain. For some sites, public rights will be easily confirmed. However, for other sites, the researchers may find that they do not have the public rights of record that they always believed they had. Armed with this knowledge, the town may be in the position to take minor corrective action or to enter into negotiations with a sympathetic owner to secure an easement to confirm or create public rights. There is a clear advantage to having this information sooner rather than later: current owners may well be more sympathetic than unknown future owners to guaranteeing public access rights to future generations.

This type of program may serve as the first step in compiling a comprehensive shoreway access or open space plan for the community. Once the research has been completed to determine which sites the public has a right to use, the town can assess its unmet needs, determine priorities, and devise a strategy for securing the necessary access.

The results of the Right-of-Way Rediscovery Programs in the pilot project communities were mixed. Some communities were able to uncover public rights of access which had been forgotten or unused. Others were disappointed to find that they could discover no recorded public rights which would clearly resolve the public's right to continued use of contested traditional access points. But regardless of their findings for the particular sites researched, most of the communities gained considerable understanding of their local access inventory and developed the skills to allow them to continue the research on other sites where public rights are suspected.

B. Basic Steps in a Right-of-Way Rediscovery Program

The following steps, more fully described below, are vital to an effective Right-of-Way Rediscovery Program. These steps were developed as part of the pilot project.

- Step 1: Form a committee which includes people familiar with the town government, real estate ownership patterns and shoreway access points, and people who are willing to devote time to researching public rights.
- Step 2: Inventory traditional access points and access points which, while perhaps not currently in use, are suspected of being subject to public rights of use.
- Step 3: Prioritize the inventoried sites for research according to the apparent east of research and which sites are most critical to the town.
- Step 4: Inventory the sources of information about public rights and become familiar with their use.
- Step 5: Develop a strategy for research with a reasonable timetable for completing research on priority sites.
- Step 6: Conduct the research.
- Step 7: Evaluate the findings and, as appropriate, make recommendations to obtain, establish or protect public rights of access.
- Step 8: Follow up these recommendations by obtaining appropriate action from individuals, the selectmen or other appropriate body.

Each of these steps is discussed in detail below.

Step 1: Formation of a Committee

The success of a Right-of-Way Rediscovery Committee will depend on the depth of knowledge and level of commitment of its members, rather than the number of people involved. A great deal can be accomplished by a few people.

In some communities, the town selectmen may decide to create the committee and actively encourage its work. If this happens, the selectmen will presumably be committed to using the findings of the committee to increase public access to the shore.

It is preferable to have the committee be created under the auspices of the town or one of its boards since this will usually ensure that the town is committed to using its findings and may also encourage the town staff to devote more time to helping the committee with its research. But official town creation is not necessary for successful research since the bulk of the relevant information is supposed to be a matter of public record, available to anybody who knows how to track it down or knows to ask to see it.

Ideally, the committee will have as members selectmen or former selectmen who are familiar with town records and processes; older members of the community who can recall patterns of public usage of access sites over the years; representatives of fishermen or others who are dependent upon access for their living; local history buffs or members of the historical society; and one or more people with a research background (although not necessarily a background in deed research). One person may fill more than one of these roles. Local members of environmental or public access organizations such as The Nature Conservancy or Maine Audubon Society may also be interested in participating. Some of these members may participate actively only through the site selection process. It is crucial, however, that at least one of the members (preferably more) is willing to devote significant time to becoming familiar with all of the material in this Handbook and doing the actual research. Research of this type tends to be rather time consuming, but many people find that they like to do this kind of problem-solving and detective work.

The inclusion of an attorney, title abstractor, or surveyor on the committee would be helpful, but is not absolutely necessary. Their services may need to be secured by the town at a later date to confirm the findings of the committee and advise the selectmen on appropriate legal actions when the town develops its strategy on how to use the results of the research.

Step 2: Inventory Traditional Access Points and Access Points Where There is a Possibility of Public Rights

The next step in the process is for the committee to make a list of 1) traditional access points where there is some uncertainty of public rights, and 2) other sites that may not currently be used for public access but where there is a suspicion that public access rights currently exist or might have existed at one time. The list should be as inclusive as possible and should include points where the committee is pretty sure, but not positive, that public rights exist.

The purpose of making this list is to help focus the research on specific sites so the effort becomes manageable and so attention can be concentrated on those sites where public rights are most likely. In making this list, the bulk of the possible sites will probably involve roads, ways or paths extending from a public road to the shore. But the committee should avoid focusing just on roads and ways. It should also be on the lookout for forgotten shoreline parcels of land owned by the town (perhaps tax acquired or unbuildable deeded parcels), easements over non-roads for public use (perhaps over undeveloped land as part of a subdivision), public access commitments in exchange for dredging, specific reservations of easements for specific groups (such as commercial fishermen) when property was conveyed by a prior owner, or other miscellaneous grants of rights to the public.

There are many sources that should be consulted in compiling this list. Town officials and staff, particularly tax assessors, may have a great deal of familiarity with these sites. They may be able to point out coastal sites where ownership is unclear or where they suspect town ownership. They should have records of tax exempt property (exempt from tax because it is owned by the town or another non-taxed entity) which should be reviewed for any forgotten town property abutting the shore. The tax assessor will also have possession of the town tax maps. These maps and related information are an invaluable resource for identifying sites for further research

since they show assumed property lines and other useful details. Current tax maps should be reviewed for unidentified strips of land or rights of ways approximately 15 to 50 feet in width which extend from public records to the water, and for designated public roads which the tax maps show as extending all the way to the water. (It should be remembered, however, that the tax maps are not to be relied upon for the final word on boundaries, locations of roads and ways, etc. The official records, such as the actual deed descriptions or town records on laying out and acceptance of a road, are controlling in the event of any discrepancy.)

Other individuals should be consulted as well, including the harbormaster, elderly residents, fishermen, and local historians. They will have knowledge of access points currently and traditionally in use. They may also have specific knowledge of reports that public rights were created by private action in specific locations (e.g., that a former long-time owner claims to have taken action to guarantee that fishermen would always be able to use his former property as they had in the past). School children may be another source of information about paths currently used for access.

A variety of other documents should also be consulted. Any available old maps of the town or area (old tax maps, old road maps, old maps of town landing places, etc.) should be reviewed for possible roads or ways extending to the water. Particular note should be made of the location of old ferry landings, fish houses and similar manmade shoreline features to which town roads were frequently established. Clearly, these maps will not be proof of public rights, but will provide good clues to sites for further research. Finally, any prior related research such as town open space studies, state access inventories, or earlier town efforts to identify ways to the shore should be reviewed.

The committee may be able to use field inspection to supplement the clues it gets from documents and individuals. For example, in Brunswick researchers were able to identify sites for further research by looking for old stone walls running to the shore which ran parallel to each other and were separated by a distance equal to an increment of one rod (16.5 feet). (Roads two rods [33 ft.] wide ["two rod roads"] were found to be common in Brunswick.) They also found that a marked difference in vegetation (e.g., young growth) on a strip of land of constant width

(approximately 16.5 to 33 feet) running to the water, bounded or not bounded by stone walls, was a useful clue to sites for further research. An old road may have been kept free of tree growth for many years before it fell into disuse and thus may now be characterized by less mature growth than the surrounding woods. However, what works in one community may not work in another. Researchers in Camden attempted to locate roads by looking for these signs, without success. If a town wants to try to use in-the-field recognition, it will have to develop its own criteria of characteristics to look for based on local patterns of development and vegetation.

Step 3: Prioritize the Inventoried Sites for Research

The committee will have to select the sites to be researched first. Top priority should probably be given to the sites that appear the easiest to resolve (e.g., sites where the committee is almost certain of public rights, believes that the documentation will be easy to obtain, but does not currently have copies of the relevant documents), to sites which are most critical to the town, and to traditional access points where a change of ownership is likely or threats of closure to the public are being made.

A 1987 law on proposed, unaccepted ways should also be considered in setting priorities for research. Under 23 MRSA Sec. 3032, new time limits are established for accepting a way laid out on a subdivision plan which was recorded in the registry of deeds prior to September 29, 1987. Under prior case law, it had been held that a town had at least twenty years, but probably something less than 43 years, to accept the dedication of a road. **Under the new more restrictive statute, a town now has only fifteen years after the date of recording of the subdivision plan or until September 29, 1997, whichever is later, to accept the way.** If the town does not accept by that time, its right to accept terminates, the way is deemed vacated, and the public has no right to use the way. If the town suspects some public rights by virtue of a subdivision fitting this description, it should take care to research that site well prior to the statutory cut-off for acceptance, or it should have the municipal officers except the way from the time limitation by filing a proper notice in the registry of deeds extending the time to accept by twenty years. (See 23 MRSA Sec. 3032 (2).)

Step 4: Inventory Sources of Information

There are many different sources of information mentioned above to use to develop a list of possible sites. In doing the site-specific research, the chief sources of information will be the town tax assessor's records, the registry of deeds records, and the town records of actions taken with regard to streets (laying out and acceptance, dedication and acceptance, purchase and acceptance, street discontinuance and street vacation). In some circumstances, historic records concerning use and ownership of certain parcels may also be helpful.

The ease of access to the town records and the usefulness of those records varies considerably from town to town. Some towns, such as Kennebunkport, have valuable compilations of all of the official town actions that have ever been taken with regard to roads. The records of those actions have been identified, copies, and compiled into one volume. While it took a fair amount of time to compile, it now makes research on a specific road much less time consuming. Some towns have their tax assessor's records keyed to the registry of deeds records so that by looking at the assessor's records, the researcher can find book and page references to the latest (or latest few) deeds affecting the parcel. This is also a considerable time saver. Many of these towns also have copies of the deeds in the tax assessor's office; however, researchers should do the deed research in the county registry of deeds so they have access to the full range of documents affecting the site.

Researchers should locate these records and become familiar with their use. Additional information on types of records contained in the registry of deeds is provided in Appendices A (*How to Conduct Research at the Registry of Deeds*), B (*Basic Information on the Registries of Deeds for the Eight Coastal Counties*), and C (*Standard Deeds: How to Determine the Type of Deed*).

Step 5: Develop Strategy and Timetable for Research

Once priorities are set and the researchers are generally familiar with the sources of information available, it is necessary to devise a plan of attack. Since the details of each site can be fairly complex, it is generally best for one person to concentrate on one site and follow that site

through all of the records. A person may handle more than one site, but it is generally inefficient to divide the research on one site between different people.

Since one never knows how complex research on a site will become, it is hard to set a completion date. But it is a good idea to set target dates so that researchers have the incentive to make steady progress on the research.

Step 6: Conduct the Research

After site identification, the research will probably follow the general process of:

- collecting relevant information from the tax assessor's records on selected sites;
- conducting the research at the registry of deeds to uncover a suggestion of public rights through a reservation of rights, grant of an easement, or creation of a road through one of the methods discussed in more detail in Part II; and
- following up as necessary with research in town records to verify municipal actions that the deeds suggest were taken.

This research may move back and forth between the sources as new leads are uncovered or the area searched widens. It involves very careful attention to details and requires thorough documentation of findings so that they may be reviewed by an attorney at a later date.

In the most common scenario, the tax assessor's records will give the researcher the correct entry into the registry of deeds records. The researcher will track records back in time at the registry, carefully reading deed descriptions and looking for a mention of roads or other possible public rights. If the registry records refer to specific public roads (of just to roads), the researcher will continue researching at the registry to try to determine when and how the road was created. If the time period can be somewhat narrowed, the researcher will then go back to town records to try to confirm that the municipal officers took the appropriate action. (If the town is small enough and the town records are sufficiently detailed so that a researcher can tell the precise location of the road referred to in town records, researchers may be able to rely more on the town records and loess on deed research. However, in many instances, the records of

action on particular roads are only comprehensible after the information from the registry of deeds has been compiled telling the researcher what to look for in the town records.)

Of course, the research methodology has to be modified for different sites, depending upon the suspected source of the public rights. The above described methodology is most applicable to rights created by laying out, dedication or purchase, and (in all cases) acceptance of a road. Acquisition of rights through reservation of an easement in a transfer from a public entity, conveyance of an easement to the public, or acquisition of property through a tax lien procedures would involve much more targeted research in the registry of deeds and little (or no) research in town records of road actions. Once a researcher has a general grasp of the possible source of public rights for a particular site, the researcher will need to consult Part II of this Handbook and the related appendices in order to determine what needs to be shown to prove public rights in that specific situation.

It is very important to do the research systematically so that it is complete, the researcher can explain the findings clearly, and the results can be verified by an attorney or surveyor. As stated previously, municipal officials should have the town attorney review the committee's research and advise the town on the extent of public rights in each site prior to taking any action. If public rights are found by the committee and verified by the town attorney, the town will want to have them thoroughly documented so that it is prepared to withstand a private owner's challenge to their accuracy.

In order to protect the credibility of the committee and increase the efficiency of the verification process, the research should be done carefully and copies of all key documents should be obtained. Many documents will be consulted in the course of finding the "key" documents. Notes should be kept on each relevant document. In addition, for deed research, information should be recorded on Deed Information Sheets (Appendix D) and Index Sheets (Appendix E and F). Their use is explained in Appendix A (*How to Conduct Research at the Registry of Deeds*). It is highly recommended that all researchers use these forms so that all relevant information is collected and so that the research can be verified more easily later.

Step 7: Evaluate the Findings and Make Recommendations

When the research is completed to the point where the committee can make an informed judgment of whether or not public rights of record are likely, the committee will be in a position to make recommendations. Possible findings are:

Finding 1: All indications from the research are that the site is private, with no hint of public rights of record.

Finding 2: The researchers have uncovered at least a hint of public rights, but have been unable to conclusively document public rights of record after exhausting all readily available sources of information.

Finding 3: The researchers believe public rights of record have been conclusively documented.

If the site appears to be private (finding #1), researchers should retain the information for future reference. In addition, researchers should be aware of the limits of their research: it is based only on record research. Acquisition of public rights through non-record means (such as by prescriptive use) or through documents that are not properly recorded will not have been ruled out by this research. Thus public rights might exist on this site even though they do not show of record. If the public has been using the site in question without challenge, researchers should recommend that the public be encouraged to continue that use in order to preserve any claim to rights through prescriptive use. In addition, other means of acquiring public rights should be evaluated such as seeking a voluntary easement from the apparent record owner, taking the site or an easement by eminent domain, or exploring more creative ways to secure access such as through a land swap or through encouraging the owner to grant a conservation easement to the local land trust. If the site is crucial to the town or there is any question about the correctness of the research, the committee may want to recommend that the town have an attorney verify the research results.

If at least a hint of public rights exist but the researchers are unable to satisfactorily document public rights (findings #2), the committee may want to recommend that funds be appropriated for an attorney or surveyor (as necessary) to continue the research. A professional researcher may be able to uncover additional documents of record which would prove or disprove the

claim, may be able to develop an alternative theory for proof of the public rights of record, or may be able to resolve remaining issues by locating the boundaries on the ground. Depending upon the strength of the argument for public rights (even though not conclusively documented) and the pattern of actual use of the site, the committee may recommend that the legal issues be left unresolved but that the town continue to encourage public use of the site. The committee could recommend that the town mark boundaries, maintain the accessway, and generally treat it as it would if it were clearly established that it was public. This strategy would place the burden on the private owner to challenge public use of the site. If public use is challenged, the town could assert public rights in court or could consider all of the options discussed immediately above for finding #1.

If the committee believes public rights of record are conclusively shown (finding #3), the committee will need to evaluate how the access site fits into the town's public access needs. If the site is not very useful (perhaps because of difficult landside terrain, a remote location, or shallow water), it may want to recommend that the town sell the public rights in the site and use the proceeds or swap the land to acquire a site that is more appropriate. Alternatively, the committee might want to recommend improvements that might make the site more useful. If the committee recommends that the town keep public rights in the site, the committee should recommend that the boundaries of the accessway be clearly marked on the ground, that any encroachments that have not earned the legal right to remain be removed, and the town maintain the accessway. Depending upon the fragility of the shoreline environment and the groups that the town thinks should use the accessway, the committee should recommend that public use be encouraged through signs, maps, or other means that the town deems to be most appropriate. The town will want to have its attorney confirm the committee's finding of conclusive public rights before it takes any action in reliance on this finding.

The committee will probably find that it is easiest to make these recommendations in the context of a comprehensive open space or shoreway access plan. If the community has not already adopted such a plan as a component of their comprehensive plan, the Right-of-Way Rediscovery Project may spur the community to complete such a plan. A systematic review of the community's access points, range of access needs, ability to maintain and police access

points, fragility of the shoreline environment and availability of local and state resources should help the committee make realistic recommendations for community action on particular access sites.

Step 8: Follow-Up Recommendations to Obtain Appropriate Action

Once the formal recommendations are made, the committee will need to follow through to make sure that they are acted upon. This will probably involve:

- reporting on positive findings at a public meeting;
- convincing the selectmen or town council and town attorney to take certain actions based on the committee's recommendations;
- monitoring planning board agendas and making sure the planning board is aware of any possible claims of public access rights in developments which are before it for subdivision, site plan or shoreland zoning review; and
- working with the local land trust, local landowners, and others to try to obtain voluntary gifts or easements along accessways.

The committee may need perseverance to keep the public access a priority concern. It will need to act as an advocate for public access. There are reports of a town council acting contrary to researchers' recommendations and deeding newly confirmed public easements to private abutters. There are other reports of towns trying to resolve encroachments on public accessways by negotiating settlements which actually left the public in a worse position. The committee, as the group most familiar with the research, will need to see that the findings are accurately understood and acted upon by the decision-makers.

Part II: Basic Legal Concepts Involved in Public Access Rights

A. Introduction

The following is a brief discussion of relevant legal concepts that are frequently involved in right-of-way research. Many of the concepts are also discussed in more detail in an appendix, as noted in the text. A glossary defining many of the commonly used terms is included as Appendix K.

It should be noted that the discussion is accurate as of June 1, 1989. There may be changes in the law after that date that may affect public rights. Researchers are advised to check with the Public Access Coordinator of the State Planning Office for an update to this Handbook or with the town's attorney to determine if there are new laws or cases that affect this material. In addition, researchers should note that this material is a summary of the relevant law. While it should be useful in explaining basic concepts to lay readers, it is just a summary. Prior to taking any formal action with regard to a site, the town's attorney or another attorney should be consulted to verify the results of the citizen research.

B. Legal Overview

In researching possible public accessways, the researcher must first determine whether public rights were established by one of the following methods of creation: laying out and acceptance, dedication and acceptance, purchase or gift, prescriptive use or tax acquired property. (As noted, acquisition of rights by prescriptive use, while an important concept, is beyond the scope of most Right-of-Way Rediscovery Projects, this is not treated in detail in this Handbook.) If roads are involved, the research will determine whether the road is a public road (public access rights and public maintenance responsibilities), public easement (public access rights but no responsibility for public maintenance) or a private road (no public access rights and no responsibility for public maintenance). If the site is found to be a public road or a public easement, the researcher will then have to verify that the public rights, once created, were not lost through abandonment by non-user, discontinuance, or as a result of long-existing obstructions.

C. Ways the Public May Acquire Rights in Land

The public will generally have rights to land either through outright ownership (fee simple absolute) or as the holder of an easement to use land owned by another for a specific purpose. If the land is owned by the town, it can be used for any public purpose approved by the town, including public pedestrian or vehicular access. If the town holds only an easement, the use of the land will be limited to the purpose specified when the easement was created.

Public rights of access to the shore frequently will be found in conjunction with a road that continues to the water. The town might own the land under the road but more typically the land under the road is owned by a private individual but is subject to an easement in favor of the general public. The actual ownership is of little consequence so long as the easement grants public rights of passage over the land.

The public may also have access rights which are not connected with a road. For example, the town may own a parcel of shorefront land which it could decide to use as an accessway. Or the town may have secured an easement to use a pedestrian access point which is over a path rather than a road.

Public rights in land that might serve as coastal access points are most likely to have been acquired through:

- laying out and acceptance
- dedication and acceptance
- purchase or gift
- prescriptive use, or
- as tax acquired property.

These are discussed below.

1. Laying Out and Acceptance.

The public may acquire rights in property through deciding where a public road is needed, laying out the boundaries of the road, taking formal action to accept the road and paying damages to the private owners from whom the land is taken. This involves the use of its powers of eminent domain. The town would only use these powers if the land was needed for a public purpose but the owner was unwilling to sell, or there was a defect in the title, or a public exigency required an immediate taking. Much of the research in a Right-of-Way Rediscovery Project may involve locating old roads which may have been laid out to extend to the shore but which have since fallen into disuse, or clarifying whether the legal boundaries of existing roads actually extend all of the way to the shore. For a more detailed discussion of the action required by a town for a valid laying out and acceptance of a road, see Appendix G: Laying Out and Acceptance of Public Ways.

2. Dedication and Acceptance.

Under this process, the town may acquire public rights (usually in the form of an easement, but it could be in fee simple) if a landowner "dedicates" or makes an offer to give an easement or the land to the public, and the town "accepts" the dedication. Both steps are necessary before the public acquires rights. This is the process usually involved in the creation of public roads in subdivisions.

A town would commonly acquire access rights to the shore when a subdivision development includes public roads or dedicated pedestrian paths which extend to the shore. In order to determine the extent of public rights, the researcher would need to gather evidence from subdivision plans (which may be recorded at the registry of deeds), from deeds to lots in the subdivision, from evidence of historical use, and from town records regarding acceptance by the selectmen, or by town use and maintenance. Dedication and acceptance is a complex area of the law since court-made law and statutes both outline requirements that must be met for public rights to be created, and since those requirements may vary slightly depending on the date of the action. For a more complete discussion of these requirements, see Appendix H: Dedication and Acceptance.

3. Purchase or Gift.

The public may purchase or be given land outright (referred to as owned in "fee simple absolute") or may purchase or be given an easement across land. In either case, there will be a deed from the owner to the town or other public body which should be recorded at the registry of deeds. The extent of the public rights should be clearly spelled out in the deed. However, the committee may need to research access sites acquired by purchase or gift if, for example, there is a question about interpretation of the deed or if there is a question about the physical boundaries of the parcel or easement. Different types of access may be acquired by this method. A town could purchase a road rather than laying it out if the sellers were willing to sell. A town might also purchase or be given a parcel of land for a park or similar use. The town would need to accept the purchase or the gift through some formal action evidencing acceptance.

4. Prescriptive Use.

The fourth way for the public to acquire rights in land is through "prescriptive use". The public may acquire rights to continue to use a piece of private property (or in some rare cases, title in fee simple) if the municipality or members of the general public have made continuous and uninterrupted use the property for at least twenty years in a manner which is "under a claim of right, adverse to the owner, with his knowledge and acquiescence, or by use so open, notorious, visible and uninterrupted that knowledge and acquiescence will be presumed." Acquisition of rights by prescription is a complex factual question. These materials are not designed to guide researchers in doing extensive research on the acquisition of rights-of-way by prescription since the focus of that research would be on patterns of actual use rather than rights of record. Asserting claims of prescriptive use could easily b e the subject of another handbook devoted exclusively to that topic. The focus of Right-of-Way Rediscovery Projects is on verifying public title, easement, or reservation which are documented in public records. However, researchers should be familiar with this doctrine since the doctrine of prescriptive use may be involved if, for example, there is a conveyance or acceptance on the record which proves to be defective but the general public has actually been using the right-of-way under the assumption that the document was not defective. As mentioned in the discussion of recommendations after completion of research (Step 7) it is recommended that continued use of traditional access

points be encouraged in these sites where public rights are not conclusively documented (if it can be done peacefully) in order to protect any claims of prescriptive use that might eventually be asserted.

5. Tax Acquired Property.

The town may also acquire outright ownership of property in fee if the private owner fails to pay real estate property taxes, the town places a lien on the property for non-payment of taxes, and the owner fails to remove the lien in a timely manner. The land acquired through this method would probably consist of single parcels of land and not roads since towns usually do not tax land under roads. There is a very specific procedure to be followed by the town in order to place a municipal lien on the real estate for failure of the owner to pay real estate taxes. If the statutory notice and lien provisions are followed and the owner fails to pay the delinquent taxes within eighteen months of the date of recording the lien, the lien is automatically foreclosed and the property is acquired by the municipality. Evidence that the municipality had acquired the property should be in the form of a municipal tax lien recorded at the registry of deeds and the absence of a corresponding discharge of the lien recorded at the registry within the appropriate time period. Caution must be used to verify that the town complied with the specific procedure that was in effect at the time the lien was established.

D. Clarification of Types of Roads

Old roads will frequently provide accessways to the shore, so it is important to understand different types of roads and public rights associated with each. There are three types of roads in Maine: **public roads** (a/k/a town ways), **public easements** (a/k/a private ways), and **privately-owned roads**. For purposes of right-of-way research, public roads and public easements (private ways) can be treated as the same; the general public has a right of unobstructed access by foot or motor vehicle over each. The primary practical difference between the two is that the municipality has a legal obligation to maintain a public road, but has no obligation to maintain a public easement. In contrast, the general public has no right to pass over a privately-owned road and the municipality has no obligation or right to maintain it. (It should be noted that the term "private way" is

frequently incorrectly used when talking about privately-owned roads. To avoid confusion, it is probably better to use the term "public easement" for roads that the town is not obligated to maintain but in which the general public has rights of passage.)

In general, as discussed above, public roads are created by dedication and acceptance or by laying out and acceptance. Public easements can be created in either of these ways, too, but may also result if a public road is created but later abandoned or discontinued in such a manner that a public easement continues to exist, as further discussed below and in Appendices I and J.

E. Loss of Public Rights after Creation

Even after roads are created by laying out and acceptance, dedication and acceptance, purchase and acceptance, or by prescriptive use, there are three ways that the public can lose rights to use roads for access:

- by abandonment,
- by discontinuance, or
- by permitting obstructions to remain across roads for a period of 20 or 40 years, depending on the circumstances.

1. Abandonment

Under Maine case law, under the doctrine of non-user, a public road can be abandoned when a town intentionally stops using it over a period long enough to show that there is no longer a public need to keep the road open. If the road was originally established by prescriptive use, an unexplained failure to use the road for 20 years may give rise to a presumption of abandonment. If the road was originally established through laying out and acceptance or dedication and acceptance, it is not clear exactly the number of years of non-use required before the presumption of abandonment will arise. One case found that 100 years of non-use was sufficient to find abandonment. If a road is abandoned by non-user, no public rights for passage continue to exist. See Appendix I: Abandonment for a More Detailed Discussion.

Abandonment through non-user should not be confused with statutory abandonment under 23 MRSA Sec. 3028 which provides that a road is presumed to be abandoned if it has not been kept passable for the use of motor vehicles at town or county expense for a period of thirty or more consecutive years immediately prior to the date when abandonment is asserted. Under statutory abandonment, the public retains an easement for passage and the municipality is empowered to establish a recreational easement in the right-of-way, so statutory abandonment is not detrimental to public rights of access. The primary use of statutory abandonment is by municipalities who want to be relieved of their obligation to maintain old roads; if the road is found to be abandoned under this statute, the town no longer has maintenance responsibilities. See Appendix I for further details.

2. Discontinuance

Discontinuance is the formal method for terminating a public road or a public easement. It involves relinquishing public rights and responsibilities by a vote of the selectmen (or similar legislative body) and paying any necessary damages to abutters. It terminates the public responsibility to maintain the road. It may or may not terminate the public rights to use the road for access. The date of the action is crucial. If the formal action to discontinue was taken prior to September 3, 1965, all public access rights were terminated unless the municipality explicitly retained a public easement in the roadway. If it was taken after that date, a public easement was retained unless a vote was specifically taken to discontinue the public easement.

The process to be followed for discontinuance is very specific. It generally involves a determination of affected property owners, a calculation of damages, notice of the proposed discontinuance, a vote by the municipal officers to discontinue and a finding of damages to be awarded, approval of the discontinuance order and damage award at a town meeting, payment of damages and documentation of the discontinuance. The specific requirements vary somewhat according to when the discontinuance occurred, depending upon the exact text of the statute then in effect. See Appendix J for a more detailed discussion of the exact requirements during different periods.

3. Obstructions

The third way to lose public rights of access over a road is to allow obstructions to remain in the road for a long period of time. Generally the public rights cannot be taken away by the adverse possession or prescriptive use of a private individual. For example, if a road was established by laying out and acceptance but it fell into disuse and an abutter used the road bed for a garden for more than twenty years, that private owner would still not acquire rights that would defeat the public claim.

However, under a Maine statute, there is an exception for buildings and fences that encroach on a road. Where the boundaries of a road cannot be determined, buildings and fences which front on and may encroach upon the road are deemed to mark the true boundaries of that road if they have existed for at least twenty years. Where the boundaries of the road are certain, buildings and fences which encroach upon the limits of the public road become the new boundaries of the road if they have been there for forty years. For further detail, see 23 MRSA Sec. 2952.

Appendix A:
How to Conduct Research at the Registry of Deeds

Some of the most important records for a right-of-way researcher will be found at the registry of deeds. Those records document the history of land ownership and the configuration of parcels over time. In order to understand the information, the researcher will need a basic understanding of the types of land transfers, common terms, how to find information at the registry of deeds and how to understand deed descriptions. These are reviewed below.

A. Types of Land Transfers

Ownership of real estate can be transferred in several ways, the most common of which are the following:

- by voluntary conveyance through deed (including warranty deeds, quick claim deeds with and without covenant, mortgage deeds, easement deeds, etc.),
- by involuntary conveyance such as through municipal tax liens,
- by right of survivorship upon the death of a joint tenant (such as property owned jointly by a husband and wife transferring automatically to the wife on the death of the husband), and
- upon death of a person who is not a joint tenant, by will or intestate succession.

The records of transfers by deed and liens will be contained in the registry of deeds for the county in which the property is located. Transfers to a surviving joint tenant occur automatically, but in a subsequent transfer by the surviving joint tenant, there will probably be a recitation about the death of the predeceasing joint tenant and, for transfers occurring more recently, a certificate of discharge of inheritance tax lien. The records concerning transfers by will or intestate succession will be contained in the probate court of the county of residence of the deceased if the estate was submitted for probate; depending upon the date of death, certain records may also appear in the registry of deeds of the county in which the property is located.

The right-of-way researcher will generally not have to be too concerned with the details of individual transfers since the researcher's focus will be on how those conveyances affect public rights. But the researcher will need to be able to follow the chain of transfers affecting certain parcels of land back through time to get to the earlier deeds, because they may contain important information. It is likely that the most relevant information in county records will be found in deeds and liens (not in probate records or records affecting transfers by survivorship), because these contain the most detailed descriptions of the land and interests involved and it is in these descriptions that relevant changes in the description will usually appear first (e.g., only a portion of the property may be conveyed or an easement may be granted). These descriptions may contain important information such as the precise bounds of the land affected by the deed, whether the parcel abuts a public road and whether it is subject to encumbrances such as an easement for public passage over the land.

B. Common Terms

There are certain basic terms with which the researcher should be familiar prior to undertaking research at the registry of deeds. They include the following: acknowledgment, chain of title, deed, grantee, grantor, grantor-grantee index, plan books, right-of-way, rod, and title search. These are defined in the Glossary contained in Appendix K.

C. How to Find Information at the Registry of Deeds

The information at the registry of deeds is relatively easy to find once the researcher understands the filing system used. The following are the basic steps that one would follow in searching the records for a particular parcel of land to see whether there is any hint of public title, easement of reservation for public access running across that property of adjacent to that parcel.

Step 1. Prior to arriving at the registry of deeds, obtain specific information about the present owner and the probably location of the parcel. That information can be obtained through the records of the tax assessor. By looking at the assessor's map, you can determine the map and lot number of the parcel which you want to research. Using the map and lot number, you can determine the name of the person most recently taxed for that property (e.g., William E. Adams).

Make sure that you note the full names of all people listed. (If there has been a conveyance within the last year that person may no longer be the owner, but the information is sufficient to get access to the relevant records at the registry of deeds.) The tax assessor's records will probably also contain information about the year the owner (Adams) was first taxed on that property and will usually contain reference to the Book and Page number at which the deed to "Adams" is recorded in the registry of deeds. Also, unless you are intimately familiar with the particular site and the surrounding area, it is helpful to make a sketch of the area from the tax map, including any distances and boundaries which appear on the map. While the tax map is not always completely accurate, it can usually be of considerable help in making sense of descriptions given in deeds.

Step 2. Go to the county registry of deeds. If the assessor's records noted a Book and Page number, find that numbered deed book and turn to the page listed. If the assessor's records are correct, you should find the deed to "Adams" for the relevant parcel of land. The deed may affect other parcels of land as well. If the assessor's records appear to be incorrect or do not include a Book and Page reference, you will need to use the grantor-grantee index books at the registry to find the reference. The index books list all of the names of grantors and grantees in alphabetical order for all deeds recorded at the registry during a specific time period. The researcher should find the index book (grantee index if they are organized in separate books) for the initial letter of the present owner's last name (A for Adams) which includes the year (e.g., 1972) that "Adams" was first taxed on that property. (If the year "Adams" was first taxed is not available from the tax assessor, the researcher would need to start with the most recent set of indices [e.g., 1989] and then work back in time.) The researcher would look in the index under the present owner's name (Adams, William E.) for deeds in which "William E. Adams" or "William Adams" is the grantee (buyer). For each such deed listed, the researcher would need to turn to the deed in the relevant deed book at the listed page. That description should then be read carefully to make sure that the deed applies to the parcel being researched. (It could instead be the deed for another parcel of land also purchased by "William Adams" at approximately the same time.) This process should be repeated until the appropriate deed affecting the parcel being researched is found.

Step 3. The researcher should fill out a deed information sheet for the deed to the current owner, "William E. Adams." (See Appendix D for a sample sheet.) That sheet will contain in summary

form the information needed to document the chain of title and to allow a reviewing attorney to determine if there are any obvious defects in the deed. In completing the sheet, the researcher should be careful to fill in all of the information requested since it will aid the researcher in keeping track of the information and will allow a reviewing attorney to review the research more easily when assessing the strength of the claim of public rights. **Particular note should be made of references to roads, ways, easements or similar indications of pedestrian or vehicular passageways on or adjacent to the parcel being researched. Note should be made of any references to subdivision plans.**

Step 4. The researcher should then shift to researching under the name of the person who conveyed the property to the present owner (e.g., David C. Black). The immediate goal is to find the deed which conveyed the property to "Black." The first place to check for this information is the deed from "Black" to "Adams." At the end of the description, it may contain a statement that this is the same land (or a portion of the land) conveyed to "Black" by deed of "Dorothy Clark" dated _____ and recorded in the said registry of deeds in Book _____, Page _____. If so, that listed book and page is the first place to check for the deed from "Clark" to "Black." If a reference to "Black's" source of title is missing (or inaccurate) the researcher will need to repeat the process outlined in Step 2, searching under the name "Black, David" starting with the year in which the conveyance was made from "Black" to "Adams" and looking for deeds in which "Black" was the grantee. Once the deed from "Clark" to "Black" is found, a deed information sheet should be filled out for that deed. The researcher should pay particular attention to determining whether the deed description is the same as that contained in the deed from "Black" to "Adams." If any discrepancies are found, the researcher should determine whether this deed actually affects the site being researched. (For example, it may actually be another parcel being transferred from Clark to Black, or could be a larger parcel of land that contains the parcelo that Black later transferred to Adams.) If it does affect the site, the researcher should make careful note on the information sheet of the differences in the description.

Step 5. Step 4 should be repeated for each prior owner until the researcher has gone back in time as far as is necessary. The initial searches for each site should go back at least 40 years (to the most recent deed which was recorded prior to 1949). If a hint of public title, easement or reservation is

found during that time the search should be extended farther back in time as is necessary to gather relevant information. (Depending on how important the site is, the researcher may want to extend the initial search back farther than 40 years looking for a hint of public title, easement or reservation.)

Step 6. In some instances, the researcher will need to check for conveyances made by a particular owner. For example, the researcher may have reason to believe that a particular owner granted an easement over the parcel for the benefit of the public. In order to get this information, the researcher will need to trace the owner's name forward in the index as "grantor" for the period of time during which that owner owned the land. This would involve using the grantor index (if grantors and grantees are indexed separately). The researcher should fill out an index sheet (see Appendix E for a blank sheet and Appendix F for a sample sheet) which notes the name searched, the index books consulted, the book and page number in which that owner appears as a grantor, the type of instrument and the location of the affected land. **Each entry in which the owner is the grantor should be listed on this sheet, taking care to fill in all of the requested information.** For the current owner, the "Interim Index", if any, and "Day Book" should also be consulted for the most recent transactions.

Step 7. The index sheet listings for that owner will then need to be reviewed to determine which of the documents need to be pulled and read by the researcher. In a full title search, each of the recorded documents in which the owner is listed as grantor (and also those in which the owner is listed as grantee) would be located and examined. However, for purposes of this project, the researcher is only looking for documents which would affect public rights to the property. Assuming that the document is properly listed in the index, the researcher should not need to look at the actual recorded document for any instruments that are listed in the index as affecting property located in a different town (but note that some index listings may indicate that an instrument affects land in more than one town), or any mortgage, discharge of mortgage, partial release of mortgage, assignment of mortgage, U.C.C. financing statement or any lien by an entity other than the town. **Please note, however, that it is extremely important to look at the other instruments, especially municipal tax liens, all easements (to determine the precise grantee, and more detailed information if the grantee is the own or another public entity other than a utility**

company) and all deeds that convey out an ownership interest in any parcel of land located in the town being researched.

Step 8. All of the information gathered during this process should be reviewed to determine whether there is any information to suggest public title, reservation or easement on the researched parcel (or over the abutting land in the case where the site is being researched because of the expectation that it abuts a town way or public easement.) The legal theories in support of public rights should be reviewed in order to determine what additional showing would need to be made or additional information gathered to make a conclusive determination of public rights. For example, if the information suggests the existence of public rights in the form of a road or easement, town records on laying out and acceptance or dedication and acceptance will need to be consulted to verify and supplement the deed information. These basic legal concepts are described in more detail in Part II of the Handbook and the related appendices.

D. Understanding Deed Descriptions

In doing research at the registry of deeds, understanding the description of the land affected by the instrument is crucial. Unfortunately, a few of the descriptions will be difficult to understand. They may describe the land only in relation to other land without giving references to how to find descriptions of the abutting land (e.g., from land of Adams to land of Black to land of Clark) or may use as corners of the parcel natural monuments that may no longer exist (e.g., a 1920 deed running from the large rock with a painted "A" to the stump of the 6" maple tree to the corner of Down's barn). The researcher will have to try to make the most of the description, focusing attention on the part of the description that would abut or contain possible public rights. The other problem with deed descriptions is that they are not always free from error. Sometimes human error alters a description (e.g., the typist copies it incorrectly from a prior deed) or grantors are confused about the extent of their holdings and convey out more than they have.

Most deed descriptions are much more helpful in describing where the parcel is located on the face of the earth. At first, it may take a little practice to focus on the precise language of the description. But with a little persistence and reference to other sources, the researcher should be able to

understand the location of the land affected by the deed. Reading the description slowly, phrase by phrase, and drawing a diagram of the parcel described will help. Precision in identifying the boundaries to the best of the researcher's ability, within the deficiencies of the description itself, is the only way to determine whether the deed affects the right parcel of land.

In reading a deed to determine whether it affects the parcel of land in question, the first place to focus is the beginning of the description. Usually the parcel is first described as being in a particular town and county. Frequently, the deed will also identify the parcel as being on a particular side of a street or road. If this initial information identifies the parcel as being remote from the site under research, there is no need to delve any further into the specific description of the parcel. (Caution: you should scan the deed to make sure that only one parcel is described in the deed; sometimes more than one parcel is affected by a single deed, but separate parcels will usually be in separate description paragraphs.)

There are two major techniques commonly used in modern deeds for specifically describing the land affected by the deed. The first is by referring to a plan or map which has been or will simultaneously be recorded in the registry of deeds. This will most often be the case in a conveyance of land that has been surveyed and subdivided or the conveyance of land that is part of a condominium or other common interest community. For example, the description will refer to a certain lot number of a named subdivision, surveyed by a named surveyor on a certain date and recorded in Plan Book X, Page Y of the Z County registry of deeds. (The researcher should note that Plan Books are different than the books in which deeds are recorded. Plan Books are large books that contain only maps and plans.) Whenever a Plan Book is referenced, the researcher should examine the plan, paying particular attention to the written notes on the plan as well as to the parcel boundaries, roads (whether there is any notation of whether they are private or public) and any other easements or pedestrian ways drawn on the plan.

The other technique commonly used for describing the land affected by the deed is by metes and bounds. This consists of a detailed description of the shape and boundaries of the parcel, usually starting at a specified point and giving the direction and length of each boundary line in succession, until it returns to the point of beginning. In describing boundaries, the description can refer to

natural or artificial "monuments" such as stone walls, rocks and trees, iron pins and adjacent land of a specified person. It can also refer to "courses and distances" of boundary lines such as "North 70 degrees 20 minutes East" or "following said road 200 feet to a point." Deeds frequently combine references to monuments, courses and distances.

If the deed description is based on a boundary survey, the description will very likely use a combination of angles and distances. Angles are usually described in degrees, with 360 degrees being equal to one full rotation (or complete circle). Each degree is equal to 60 minutes (') and each minute is equal to 60 seconds ("). If, for example, the direction of a line is stated as "North 44 degrees 30 minutes 14 seconds East" the location of that line would be found by starting with the line which is due north from the beginning point of that call, and then rotating that line easterly until it is 44 degrees 30 minutes 15 seconds clockwise (to the east) from north. The calls will be expressed as angles east or west of north or south. In interpreting a metes and bounds description, one must pay close attention to the direction of travel (the direction in which the description is proceeding around the perimeter back toward the point of beginning). For example, the bearing N xx degrees yy minutes E describes the same line as S xx degrees yy minutes W going in opposite directions of travel.

Various rules of construction have been developed for resolving ambiguities in deed descriptions in order to give effect to the expressed intent of the parties. The technical rules of construction control so long as nothing inconsistent appears in the deed. In general, if the terms are conflicting, more weight in interpreting the description is given to the following types of references, in descending order: natural monuments, artificial monuments, courses, distances, description of tract by name, statements of quantity.

Other rules of construction address issues such as descriptions bounded by monuments with width (to the center of the monument); by a stream (to the center of the stream); by an artificial pond (to the center of the stream as before the flooding); and by a natural pond (to the low water mark). For land on tidal waters, Maine cases have held that, unless previously expressly conveyed out, the owner of uplands adjoining tidal waters owns to the low water mark, not exceeding one hundred rods

below the high water mark. The flats are held to pass with the conveyance of the uplands, unless a contrary intent is expressed in the deed.

Appendix B:
Basic Information on the Registries of Deeds for the Eight Coastal Counties (as of June 6, 1989)

Cumberland County Registry of Deeds

This registry is in the Cumberland County Court House at 142 Federal Street in Portland. The hours are Monday through Friday from 8:30am to 4:30pm. The phone number is 871-8389.

You will find the indexes to the deeds in a single set listing both Grantors and Grantees. This set consists of a series of volumes each covering conveyances for a certain specified period of time (e.g. five years). Within each volume grantors and grantees are together listed alphabetically.

The registry is, at this writing, in the process of putting its plans on microfilm. At present the researcher must work with the large Plan Books which are kept under several of the working tables. A different arrangement may be in place in the future. There is an Index to Plans to help you locate the plans in which you are interested.

If copies of deeds are desired, the registry asks that you place a slip of paper – on which is written the book number, the exact pages which you would like copied (e.g. Book 564, Page 333-335, or Book 564, Page 333 entire deed) and your full name – in the book at the page where you wish copying to begin. Leave this book on the designated table. You may pick up your copies when you leave or at any time after they are made. For copies of plans, bring the Plan Book and Page numbers to the counter and request a copy. The cost per page for copies of deeds is $1.00. Plans are $5.00 per plan.

The records at this registry go back to 1750. Records prior to 1750 may be found in the York County Registry in Alfred (see description of that registry, above).

Hancock County Registry of Deeds

This registry is in the Hancock County Court House at 60 State Street in Ellsworth. The hours are Monday through Friday from 9:00am to 4:00pm. The phone number is 225-6512.

You will find the indexes to the deeds in two sets: Grantor indexes and Grantee indexes. Both sets consist of a series of volumes each of which covers conveyances for a certain specified period of years (e.g. five years). Within each volume the names of either the grantors or grantees (depending upon which set you are using) are arranged alphabetically.

Copies of nearly all plans are available in file cabinets near the front desks. Originals of plans are in large Plan Books located on shelves under the deed indexes. Some very old plans and maps are located in a vault in the cellar beneath the court house. References to the latter plans will be to Box 1 or Box 2. These plans are not kept in any order but are merely piled in the boxes. The maps are mostly in extremely poor shape and should not be handled any more than is absolutely necessary. If reference must be had to these old plans, you will need to ask assistance from one of the staff to show you where the vault is. Most, if not all of the plans you should need, however, should be available in copies on paper filed in the cabinets mentioned above, with the exception of Highway maps, which are available only as originals in the large Plan Books. There is an Index to Plans located near the indexes to deeds to help you locate the plans in which you are interested.

If copies of deeds are desired, the registry asks that you fill out an order form, available at the end of the shelves holding the deed indexes. Give the information which it asks you to and present it at the counter. If a copy of a plan is desired, make it clear on the order form that it is a Plan Book reference you are giving and not a Deed Book reference. You may be able to pick up your copies later in the day, before you leave. However, since this is a fairly busy registry and the staff is relatively small, you may have to return the next day to pick up your copies. The cost per page for deeds is $1.00. Plans are $4.00 per plan.

The records in this registry go back to 1783. Records prior to 1783 are in the Lincoln County Registry in Wiscasset (see description of that registry above).

Knox County Registry of Deeds

This registry is in the Knox County Court House in Rockland. The hours are Monday through Friday from 8:00am to 4:00pm. The phone number is 594-4061.

You will find the indexes to the deeds in two sets: Grantor indexes and Grantee indexes. Both sets consist of a series of volumes each of which covers conveyances for a certain specified period of years (e.g. five years). Within each volume the names of either the grantors or grantees (depending upon which set you are using) are arranged alphabetically.

Copies of plans are available in hanger cabinets located near the deed indexes. Originals are in large Plan Books shelved under the table near the deed indexes but should not need to be consulted since copies of all recorded plans are in the hanger cabinets. There is an Index to Plans to help you locate the plans in which you are interested.

If copies of deeds are desired, the registry asks that you place a slip of paper – on which is written the book number, the exact pages which you would like copied (e.g. Book 564, Page 333-335, or Book 564, Page 333 entire deed) and your full name – in the book at the page where you wish the copying to begin. Leave this book on the table near the copying machine. You may pick up your copies when you leave or at any time after they are made. For copies of plans, bring the Plan Book number and Page number to the counter and request a copy. The cost per page for copies of deeds is $.50. Plans are $3.50 to $4.00 depending on the size of the plan.

The records at this registry go back to 1860. However, copies of records between 1760 and 1860 are available at the registry. These records are kept in a separate area with their own indexes. If you need to use these records, you may wish to ask one of the staff to give you a quick orientation.

Lincoln County Registry of Deeds

This registry is in the Lincoln County Court House on High Street (U.S. Rte. 1) in Wiscasset. The hours are Monday through Friday from 8:00 to 4:00. The phone number is 882-7431.

You will find the indexes to the deeds in a single set listing both Grantors and Grantees. This set consists of a series of volumes each covering conveyances for a certain specified period of time (e.g. five years). Within each volume grantors and grantees are together listed alphabetically.

Plans are available in several forms. For plans recorded up to 1975, the originals may be found in the large Plan Books, Volumes 1-25 and copies may be found on mylar on hanger racks. For plans recorded after 1975, the originals may be found in the large Plan Books, Volumes 26-Present, and copies may be found both on mylar on hanger racks and in paper copies in file cabinets. Paper copies tend to be the easiest to use. There is an Index to Plans to help you locate plans in which you are interested.

If copies of deeds are desired, the registry asks that you make a list of the deeds you would like copied, giving the book number(s) and the exact pages in each book which you would like copied. Write your name on each list you submit. Put the deed books back on the shelves where they belong. Give this list to whomever is available in the office. The staff will go and pull the appropriate books from the shelves and make copies for you. For copies of plans, make it clear on your order form that you are giving a Plan Book reference and not a deed book reference (e.g. Plan Book 27, Page 3). You may pick up your copies when you leave or any time after they are made. The cost per page for deeds is $1.00. Plans are $5.00 per plan.

The records in this registry go back to 1760. Records prior to 1760 may be found in the York County Registry in Alfred (see description of that registry above).

Sagadahoc County Registry of Deeds

This registry is in the Sagadahoc County Court House at 725 High Street in Bath. The hours are Monday through Friday from 9:00am to 4:30pm. The phone number is 443-2441.

You will find the indexes to the deeds in a single set listing both Grantors and Grantees. This set consists of a series of volumes each covering conveyances for a certain specified period of time (e.g. five years). Within each volume grantors and grantees are together listed alphabetically.

Plans recorded before 1971 will be found in Volumes 1-9 of the large Plan Books. Plans recorded in 1971 or later may be found either in paper copies in file cabinets or on mylar in hanger cabinets. If you can't locate the plan you need, consult someone on the staff of the Registry. There is an Index to Plans to help you locate the plans in which you are interested.

If copies of deeds are desired, the registry asks that you place a slip of paper – on which is written the Book number, the exact pages which you would like copied (e.g. Book 564, Page 333-335, or Book 564, Page 333 entire deed) and your full name – in the book at the page where you wish the copying to begin. Leave this book on the table near the copying machine. For copies of plans, bring the Plan Book number and Page number to the desk and request a copy. You may pick up your copies when you leave or at any time after they are made. The cost per page for copies of deeds is $1.00 for the first page and $.50 for subsequent pages. Plans are $5.00 per plan.

The records at this registry go back to 1854. Records prior to 1854 can be found at the Lincoln County Registry in Wiscasset (see description of that Registry below).

Waldo County Registry of Deeds

This registry is in Belfast. The hours are Monday through Friday from 8:00am to 4:00pm. The phone number is 338-1710.

You will find the indexes to the deeds in two sets, Grantor indexes and Grantee indexes. Both sets consist of a series of volumes each of which covers conveyances for a certain specified period of years (e.g. five years). Within each volume the names of either the grantors or grantees (depending upon which set you are using) are arranged alphabetically.

Copies of plans are available in paper copies in file cabinets. All plans have been copied, so you should have no need to examine the originals in the large plan books. There is an Index to Plans to help you locate plans in which you are interested.

If copies of deeds or plans are desired, the registry asks that you make out an order slip, filling in the information which it asks of you. When ordering a copy of a plan, make it clear that it is a plan you are ordering so there will be no confusion with Deed Book references. Put the plans back in the files and deed books back on the shelves. Give the order slip to the appropriate person on the registry staff. The staff will pull the appropriate book(s) and/or plan(s) and make copies for you. You may pick up your copies when you leave or at any time after they are made. The cost per page for deeds is $.50. Plans are $5.00 per plan.

The records here go back to the early 1800s. Some records go back to the late 1700s. Earlier records may be found in the Lincoln County Registry in Wiscasset (see above for description of that registry).

Washington County Registry of Deeds

This registry is in Machias. The hours are Monday through Friday from 8:00am to 4:00pm. The phone number is 225-6512.

You will find the indexes to deeds on tables around the room. The indexes pre-1975 consist of a set of volumes in which you will find two sections, one for Grantors and one for Grantees. Each volume covers a period of years (e.g. 5 years). Both the Grantor and Grantee sections are arranged alphabetically. The indexes after 1975 consist of two sets, one for Grantors and one for Grantees. Each set consists of a series of volumes each covering a period of years in which either the Grantors or Grantees are listed alphabetically (depending upon which set you are using). The indexes are arranged on the tables by years. Thus you will find on any one table both the Grantor index and the Grantee index for the same period.

The registry is presently in the process of making paper copies of all its plans. At the moment, all plans are available as originals in the large Plan Books shelved under two of the work tables. Plans are also available on mylar in hanger cabinets near the office. Some plans are already available in paper copies kept in file cabinets. There is an Index to Plans kept near the deed indexes to help you locate plans in which you are interested.

If copies of deeds are desired, the registry asks that you bring the book to the office and ask for a copy. It will be done while you wait. For copies of plans, give the correct reference to a staff person and they will arrange for a copy to be made. The cost per page for deeds is $.35. Plans are $2.40 for the large plans and less for smaller plans.

The records in the registry go back to 1783. Records prior to that are in the Lincoln County Registry in Wiscasset (see above for description of that registry).

York County Registry of Deeds

The registry is in the York County Court House in Alfred. The hours are Monday through Friday from 8:30am to 4:30pm. The phone number is 324-1576.

You will find the indexes to the deeds in two sets: Grantor indexes and Grantee indexes. Both sets consist of a series of volumes each of which covers conveyances for a certain specified period of years (e.g. five years). Within each volume the names of either the grantors or grantees (depending upon which set you are using) are arranged alphabetically.

Plan Books are near the deed indexes, but copies of all the plans are also on file in cabinets and are much easier to use. The copies are numbered in precisely the same manner as the plan books so references to Plan Book X, Page Y will take you both to the actual Plan Book X, Page Y, if you choose, or to the copy in the cabinet in the file marked Plan Book X, Page Y. There is an index to the Plans which is kept near the deed indexes.

If copies of deeds are desired, the registry asks that you place a slip of paper – on which is written the book number, the exact page number(s) which you would like copied (e.g. Book 564, Page 333-335, or Book 564, Page 333 entire deed), and your full name – in the book at the page where you wish the copying to begin. Leave this book on the table beside the copy machine. You may pick up your copies when you leave (or any time after the staff actually makes the copies) at the counter. To get copies of plans, ask for assistance at the counter. The cost is $1.00 per page for deeds and $3.00-4.00 per plan. The records at the York County Registry go back to 1639.

Appendix C:
Standard Deeds: How to Determine the Type of Deed

In Maine, there are three basic types of deeds and several more specialized deeds for use in certain situations. The basic types of deeds are warranty deeds, quitclaim deeds with covenant, and quitclaim deeds without covenant (also known as a release deed). The difference between these types of deeds has to do with the extent of the guarantee made by the grantor that his deed is "good."

A **warranty deed** contains the most extensive guarantees by the grantor. Among the guarantees made are that the grantor has the right to convey the property, that the premises are free from all encumbrances, that there is no other person with better title and that the grantor will defend the grantee's (the one to whom it is conveyed) title against all lawful claims existing at the time of conveyance.

The grantor under a **quitclaim deed** with covenant does not make those guarantees. He conveys only whatever interest he may have in the land at that time. But in addition, he guarantees that he has done nothing to diminish the quality of the title and has allowed no defects in the title to arise during the period of his ownership of the land.

The **quitclaim deed without covenant** merely transfers whatever interest (if any) the grantor then has in the land. It makes no guarantees about the quality of the title, encumbrances that may exist on the property, or defects in the title. It transfers whatever interest the grantor has at that time. Thus, if the grantor, for instance, has no interest in the land at all, the grantee receives nothing. On the other hand, the grantor may have good title to the land. In that case, the grantee will receive that same good title; the only difference from a warranty deed being that the grantee will not also receive the grantor's promise to defend the title against all adverse claims.

The researcher can easily distinguish between these deeds by examining the document. There are actually six basic types of deeds in common use: a traditional long form and a corresponding "short form" for each of the three types (warranty deeds, quitclaim deeds with covenants and quitclaim

deeds without covenants). The short form deeds were approved in 1968. They have the same force and effect as the long forms, but avoid the need to recite the standard phrases in each deed. The Short Form Deed Act authorizes shorthand phrases to be used in the deeds, with the full meaning of the phrases stipulated in the Act.

To determine what type of deed it is, the researcher should look for the following:

- **Warranty Deed, long form:** The grantor's covenants paragraph (near the end) will state that the grantor will "**warrant and defend the same to the Grantees against the lawful claims and demands of all persons.**" (There may be minor variations in exact wording, but warrant and defend are the key words.)

- **Warranty Deed, short form:** After identification of the grantee, the deed states "**with warranty covenants.**"

- **Quitclaim Deed with Covenant, long form:** The grantor's covenants paragraph will state that grantor will "**warrant and defend the title against the lawful claims and demands of persons claiming by, through or under me**" (or under "us").

- **Quitclaim Deed with Covenant, short form:** After identification of the grantee, the deed states "**with quitclaim covenant**."

- **Quitclaim Deed without Covenant, long form:** There is no grantor's covenants paragraph. Instead, after the identification of the grantee, it states that grantor does "**demise, release, bargain, sell and convey and forever quitclaim**."

- **Quitclaim Deed without Covenant, short form:** After identification of the grantor, instead of saying the grantor grants to the grantee, it says the grantor "**releases**" to the grantee and makes no further covenants regarding title.

It is important to distinguish between the different types of deeds because the type used can affect the interest transferred. For example, the quitclaim deed conveys only what interest the grantor has

(if any) at the time of execution. If grantor doesn't have any interest, but later acquires it, nothing passes. On the other hand, a warranty deed will serve to convey after-acquired title (title which the grantor did not have at the time of conveyance, but later acquires). Researchers are asked to indicate the type of deed on line seven of the Deed Information Sheet (Appendix D).

Appendix D:
Deed Information Sheet

Page ___ of ___

1. Access Site: _____ Town: _____

2. Name of Researcher: _____

3. Full name of Grantor(s): _____

4. Grantor's capacity (if any) (e.g., executor, administrator): _____

5. Full name of Grantee(s): _____

6. Book/Page: _____

7. Type of Instrument (WD, QCw/C, QCw/oC, etc.): _____

8. Description of Parcel Affected by Conveyance (make particular note of any differences between this description of what is being transferred to this grantee and the description contained in the deed where this grantee conveyed the property as the grantor):

_____

_____

_____

_____

_____

_____

_____

_____

(or check here ___ if this is exactly the same description as you have already detailed in the Information Sheet for Book ___, Page ___.)

9. Any suggestion of public right, title, easement or reservation on this parcel or adjacent to it (if the possible accessway is adjacent to this parcel, describe <u>in detail</u> any references in the deed to the boundary that you think might be a public road, town way or public easement):

_____

_____

_____

10. Reference in this deed to other documents:

Deed to Grantee: Book ___, Page ___. Reference to Plan: Plan Book ___, Page ___.

Other references to source of title: _____

11. Statements about relationship of people mentioned (e.g., X is the surviving joint tenant of Z, Z having died on a/b/cd):

12. Date deed was signed by Grantor: _____

13. Date deed was acknowledged by notary/attorney/J.P.: _____

14. Date deed was recorded in registry of deeds: _____

15. Spousal joinder:
- ___ Grantors were husband and wife
- ___ Spouse not grantor, but signed deed
- ___ Deed says grantor not married
- ___ Grantor not a person (estate, business, etc.)
- ___ Other (please indicate) _____

16. Continuation from above (please specify), sketch of parcel or other observations:

Appendix E: Index Sheets

Page ___ of ___

Grantor's Name Searched	Years of Index	Book/Page	Type of Instrument	Town	Different Location or See Deed Info Sheet *

* This column is to be completed for each instrument you look up in a deed book. You do not need to look at the actual deed if the index shows the deed affects a different town (unless it has "&" after the town), if the person whose name you are searching is the grantee rather than the grantor (which you will run into if the registry has a combined grantee/grantee index), or if the index says the instrument is a mortgage, discharge of mortgage, partial release of mortgage, assignment, U.C.C. financing statement or lien by an entity other than the town.

Appendix F:
Index Sheets – Sample
For a Site in Portland

Page ___ of ___

Grantor's Name Searched	Years of Index	Book/Page	Type of Instrument	Town	Different Location or See Deed Info Sheet *
William F. Adams Mary E. Adams	1975-80	4567/89	Deed	Portland	p.1
		4580/102	Mortgage	Portland	
		4789/324	Easement	South Portland	
		4795/243	Easement	Portland	p.2
	1970-75	Nothing			
	1965-70	3867/365	Deed	Portland	different location
David Black	1965-70	3642/123	Deed	Portland	p.3
		3521-234	Mortgage	South Portland	

* This column is to be completed for each instrument you look up in a deed book. You do not need to look at the actual deed if the index shows the deed affects a different town (unless it has "&" after the town), if the person whose name you are searching is the grantee rather than the grantor (which you will run into if the registry has a combined grantee/grantee index), or if the index says the instrument is a mortgage, discharge of mortgage, partial release of mortgage, assignment, U.C.C. financing statement or lien by an entity other than the town.

Appendix G:
Laying Out and Acceptance of Public Ways

A. In General

One way in which a town can acquire rights in land for use as a public road is through laying out and acceptance. This means of creating public ways is defined and controlled by statutory law. The statute controlling this area of law has undergone numerous changes over the years, but the basic process has remained the following: upon petition or upon their own initiative the town selectmen decide a new public road is needed; the town selectmen or their agents lay out the boundaries of the proposed way; the town approves the laying out; damages are paid to those injured by the taking. The exact requirements as they existed at different times in Maine history are laid out in period-by-period detail below.

(It is important to note that even if a road is found to have been laid out and accepted the public's rights may have been later lost or given up by the town through abandonment or discontinuance. See Appendix I for a discussion of Abandonment. See Appendix J for a discussion of Discontinuance.)

If the researcher finds that a laying out and acceptance was accepted but the requirements set forth below have not been complied with in all respects, the researcher should not assume that this is automatically fatal to a claim of public rights in the road. If there is evidence that the road was nevertheless used by the town on the assumption that the road had in fact been properly laid out and accepted, it is possible that the public has acquired rights to continue to use the road through prescriptive use. Additional research would be required to confirm or deny prescriptive rights.

B. Period by Period Detail of Statutory Requirements

1. Introduction

To use this outline, the researcher needs to know the date on which the action was taken to lay out and accept the road. The researcher should then turn to the section below which includes that date to find the statutory requirements at that time for a legally effective laying out and acceptance.

It should be noted that the statutory references given at the end of each period-outline are not necessarily to the only codification which existed during the period outlined. These references do give the researcher the first full rendition of the law for the outlined period. For certain periods, however (as for instance between 4/5/1885 and 12/30/1944), there were several recodifications of the same substantive law (between 1885 and 1944 there were recodifications in 1903, 1916 and 1930). However, no such recodification made any substantive changes in the general law of laying out and acceptance as outlined for the period.

If the records of the town indicate any deviation from the general requirements outlined below for the periods indicated, further reference should be had both to the statutory sections and to the related case law (some of which is cited in the case notes at the end of the statute) in order to determine in what way the discrepancy may affect the town's claim of ownership.

Please note, however, that even though the **particular** statutory sections outlined in each period below for the general requirements for laying out and acceptance did not change substantively during that period, it is possible that other sections or related topics may well have undergone change. For instance, there are statutory provisions which deal with issues other than the basic process of laying out and acceptance such as situations in which town officials unreasonably refuse or neglect laying out town roads requested by any town inhabitant(s) and situations in which injured parties are unsatisfied with the damages which they have been allowed. These special situations are not covered in this summary. For issues not directly covered in this Appendix, the researcher will have to locate the statute and relevant case law in effect on the date that the action was taken.

It is recommended that the researcher seek assistance from a reference librarian at the law library to help with this type of research.

2. Period-by-Period Outline of Statutory Requirements

❖ ***March 2, 1821 to April 1, 1841***

1) Selectman of town (or appointees) lay out.
2) Laying out reported to town at some public meeting held for the purpose.
3) Town inhabitants approve and allow.
4) Damages paid to those injured as agreed by selectmen and party injured.

For further reference, see Laws of the State of Maine, 1821, Ch. 118, Sec. 9. There is case law which indicates that public notice of the laying out had to be given before the actual laying out was undertaken. [3 Greenl. 438; 1 Fairfield 335] There was apparently a requirement under Massachusetts law that "seasonable notice" be given. [MRS 24, Sec. 68; 1 Mass 86] The exact requirement in Maine prior to April 2, 1841 is not clear.

❖ ***April 2, 1841 to December 31, 1857***

1) Selectmen of town (or appointees) lay out.
2) Seven days prior to laying out, notice posted in two or more public places in the town and in the vicinity of the proposed route stating intention of selectmen to lay out and stating the termini of such road.
3) Seven days prior to town meeting in which inhabitants will note on accepting the road, a copy of the laying out, with boundaries and admeasurements, must be filed with town clerk.
4) The laying out, with boundaries and admeasurements, reported to town at meeting of inhabitants regularly warned and notified thereof.
5) Inhabitants must allow and accept at aforesaid meeting of which they have been regularly warned and notified.
6) Selectmen to determine damages to be paid to persons injured.
7) Town pays damages.

For further reference, see Revised Statutes of Maine, Ch. 25, Sects. 27-29, 31 (1841).

❖ ***January 1, 1858 to February 28, 1960***

1) Municipal officers (or their agents) lay out.
2) Seven day notice posted in two public places and in vicinity of the way, describing it in them.
3) Written return of their proceedings, containing the bounds and admeasurements of the way, and the damages allowed to each person for land taken, filed with the town clerk.
4) Accepted in town meeting legally called by a warrant containing an article for the purpose.
5) Town pays damages.

For further reference, see Revised Statutes of Maine, Ch. 18, Sects. 18, 19, and 21 (1857).

❖ ***February 29, 1860 to April 3, 1883***

1) Municipal officers (or their agents) lay out.
2) Seven day notice posted in two public places and in vicinity of the way, describing it in them.
3) Municipal officers shall determine whether the way shall be private or a town way.
4) Written return of their proceedings, containing bounds and admeasurements of the way and damages to be allowed to each person for land taken, to be filed with town clerk.
5) Accepted by town at meeting legally called by a warrant with an article for the purpose.
6) Town pays damages.

For further reference, see Revised Statutes of Maine, Ch. 18, Sects. 18, 20, and 21 (1871).

❖ ***April 14, 1883 to April 4, 1885***

1) Municipal officers (or their agents) lay out.
2) Seven day notice posted in two public places and in vicinity of the way, describing it in them.
3) Municipal officers shall determine whether the way shall be private or a town way.
4) Written return of their proceedings, containing bounds and admeasurements of the way and damages to be allowed to each person for land taken, to be filed with town clerk.
5) Accepted by town at meeting legally called by a warrant with an article for the purpose.
6) Town pays damages.
7) Land must be entered upon and possession taken for way within two years after laying out or proceedings void.

For further reference, see Revised Statutes of Maine, Ch. 18, Sects. 14, 16, and 36 (1883).

❖ ***April 5, 1885 to December 29, 1944***

1) Municipal officers (or their agents) lay out.
2) Seven day notice posted in two public places and in vicinity of the way, describing it in them.
3) Municipal officers shall determine whether the way shall be private or a town way.
4) Written return of their proceedings, containing bounds and admeasurements of the way and damages to be allowed to each person for land taken, to be filed with town clerk.
5) Accepted by town at meeting legally called by a warrant with an article for the purpose.
6) Town pays damages.
7) Land must be entered upon and possession taken for way within two years after laying out or proceedings void.

For further reference, see Revised Statutes of Maine, Ch. 23, Sects. 16, 18, 20 and 38 (1903).

❖ ***December 30, 1944 to September 11, 1959***

1) Municipal officers (or their agents) lay out.
2) Seven day notice posted in two public places and in vicinity of the way, describing it in them.
3) Municipal officers shall determine whether the way shall be private or a town way.
4) Written return of their proceedings, containing bounds and admeasurements of the way and damages to be allowed to each person for land taken, to be filed with town clerk.
5) Accepted by town at meeting legally called by a warrant with an article for the purpose.
6) Town pays damages.

For further reference, see Revised Statutes of Maine, Ch. 84, Sects. 29 and 31 (1944).

❖ ***September 12, 1959 to July 28, 1976***

1) Municipal officers (or their agents) lay out.
2) Seven day notice posted in two public places and in vicinity of the way, describing it in them.
3) Municipal officers shall determine whether the way shall be private or a town way.

4) Written return of their proceedings, containing bounds and admeasurements of the way and damages to be allowed to each person for land taken, to be filed with town clerk.

5) Accepted by town at meeting legally called by a warrant with an article for the purpose.

6) Town pays damages.

7) No laying out or acceptance of land or any interest therein by a municipality or other municipal corporation after September 12, 1959 is effectual against persons without actual notice thereof, unless there is recorded in the registry of deeds either a deed or certificate attested by the clerk of said municipal corporation, describing the land and setting forth the final action of the municipal corporation in regard thereto.

For further reference, see 23 Revised Statutes of Maine, Sects. 3001, 3003, 3005 and 3503 (1964).

❖ ***July 29, 1976 to Present (June 1, 1989)***

1) Municipal officers (or their agents) lay out.

2) Seven day notice posted in two public places in the municipality and in the vicinity of the way, which describe the way.

3) Municipality may take property or interests therein for highway purposes if municipal officers determine:

a. public exigency requires immediate taking of property, or

b. if municipality is unable to purchase it at what municipal officers deem reasonable valuation, or

c. if title is defective.

4a) In municipalities where municipal officers have legislative power of appropriation, municipal officers:

a. file with municipal clerk condemnation order which includes a detailed description of property interests to be taken, specifies location by metes and bounds, specifies owner(s) of record, so far as reasonably determinable, and specifies the amount of damages for property interests taken;

b. serve on the owner(s) of record a copy of condemnation order and a check for damages awarded. (In case of multiple ownership, check may be served on any one of owners.);

c. Title passes upon service of condemnation order and check or upon recordation, whichever occurs first.

4b) In municipalities where town meeting has the legislative power of appropriation:

a. municipal officers file condemnation order (as described above) with town clerk and send a copy to owner(s) of record by registered mail;

b. town meeting duly called approves article generally describing property interest to be taken and stating amount of damages to be paid. (Town meeting may not amend the article except to increase amount of damages to be paid.);

c. If article approved, check for amount of damages authorized served immediately upon owner(s) of record. (In case of multiple ownership, check may be served on any one of the owners.)

d. Title passes upon service of check or recordation, whichever occurs first.

5) No property or interests therein taken by a municipality after 9/12/1959 are valid against owners of record or abutting land owners who have not received actual notice, unless there is recorded in the registry of deeds a deed or certificate attested by the municipal clerk, describing the property and stating the final action of the municipality with respect thereto.

(Note: unless specifically provided otherwise, or unless property or interests to be taken include land or right-of-way of a railroad corporation or a public utility, title taken for town ways after December 31, 1976 are in fee simple.)

For further reference, see 23 Maine Revised Statutes Annotated, Sec. 3021-3024.

Appendix H:
Dedication and Acceptance or Vacation

A. Dedication

In Maine, an owner of land can offer to donate land (or an easement to use the land) to the municipality for road purposes. The public acquires no right to use the land for a road until the municipality accepts the offer. The specific requirements of the offer of dedication and the acceptance are addressed in case law and by statute.

1. Historically under case law

The basic method recognized in Maine case law for the dedication of public ways is through an express act of the landowner giving up an interest in the land and transferring it to the municipality. This can be accomplished directly by a landowner tendering a deed to the municipality. The courts have also held that dedication could occur if a subdivision plan showing streets were recorded and one or more lots were conveyed by deeds referring to the plan or streets shown on the plan [*Harris vs. City of South Portland*, 118 A.326, 188 Me. 356 (1919); see also *Callahan vs. Ganeston Park Development Corp.*, 245 A.2d 274 (1968)] or if an unrecorded subdivision plan is used as a means of describing the lot(s) sold and is referred to in the description in the recorded deed(s) to the lot(s) sold. [*Danforth vs. City of Bangor*, 27 A.268, 85 Me. 423 (1893).]

The courts have also held that even if a plan is not recorded or referenced or a deed tendered to the municipality, a dedication can occur if the owner acts or conducts himself in a way that clearly indicates an intent to dedicate the land to free use by the public. But the proof of intent must be clear and unequivocal before the court would find a n implied dedication. [*Littlefield vs. Hubbard*, 124 Me. 299, 128A 285; *Baker vs. Petrin*, 95 A.2d 806, 148 Me. 473 (1953).] In evaluating a claim of implied dedication, the court would look to all of the circumstances including value and nature of the land, relation to other public roads, use made of the land, oral declarations of the owner and

improvements made by the public to evaluate the claim of intent to dedicate. The burden of proof is on the one claiming the dedication.

Regardless of how the dedication occurs, in order to create public rights, the dedication must be fore the benefit of the general public rather than a specific group of people. Courts have held that the grantor may impose "reasonable limitations" both as to the period of acceptance and rights dedicated, but the grantor may not impose limitations which are "repugnant to the grant or which contravene public policy." [*Callahan vs. Ganeston Park Development Corp.*, 245 A.2d 274, 118 Me. 356 (1919)] If the subdivider recorded a plan but noted on that plant that the use of the streets was reserved to a certain group of individuals (e.g. lot owners and their invitees), or if there was some other indication that the developer did not intend to dedicate the streets to the public (such as an agreement between the developer and the town), then no dedication to the public would occur even though a plan is recorded.

In the coastal context, an 1872 case held that reparian developers who lay out and sell lots delineated on a plan having streets which terminate on navigable waters are presumed to have dedicated to the public such streets down to the water at all states of the tide unless there is an express reservation of the flats. [*Stetson vs. City of Bangor*, 60 Me. 313 (1872)]

2. The effect of the 1976 law

In 1975 a law was passed (effective July 29, 1976) which essentially restated the case law on dedication by tendering a deed to the municipality or by recording an approved subdivision plan. The law clarified the documentation required, but made little substantive change in the law of dedication. It states that property interests may be dedicated to the public for public ways if the owner of the property files some written instrument (affidavit, petition, deed, etc.) with the municipal offices describing the property or interest being dedicated and stating that the owner is voluntarily and without any claim of damages making the dedication to the town. In the alternative, the statute provides that dedication can occur if the owner files in the registry of deeds an approved subdivision plot plan which describes property to be appropriate for public use. [23 MRSA Sec. 3025, effective July 29, 1976] Although no cases have directly so stated, it appears that the method

of implied dedication also continues to be a viable means of dedication even after the passage of the 1976 law.

3. The effect of the 1987 Statute

A 1987 law, effective for subdivisions recorded after September 29, 1987, clarifies what steps a developer must take to limit the rights granted to the public by virtue of the subdivision. [23 MRSA Sec. 3031(3).] It allows the developer to shorten the period which the public has to accept the incipient dedication to less than 20 years, allows the owner of the subdivision to retain the fee interest under any roads, and confirms that the developer has a right to grant less than full public rights (presumably to the extent of keeping the roads completely private) by noting that on the plan and in any conveyance of land shown on the subdivision plan.

B. Acceptance

1. General Law

Regardless of the means of dedication, the public has no perfected right to use the street until the town accepts the dedication. Under Maine law, a dedication can be accepted by formal vote of the legislative body of the town, *or* informally by "some act" (such as use and maintenance) indicative of acceptance. [*Vachon v. Inhabitants of the Town of Lisbon*, 29 A.2d 255 (1972)] It has been held that, in the absence of a formal vote, 20 years of public use constitutes acceptance. [*Bartlett v. City of Bangor*, 67 Me. 460 (1878)] It has also been held that actual enjoyment by the public for a length of time sufficient that public accommodation and private rights would be materially affected by interruption constitutes acceptance. [*Manchester v. Augusta Country Club*, 477 A.2d 1124 (1984)]

A town has to accept the dedication within a reasonable time of the dedication or it is barred from accepting it. Until enactment of the 1987 law affecting roads shown on recorded subdivision plans (discussed below), determination of what constituted a reasonable time has been made by the courts on a case-by-case basis. There were no clear guidelines as to what period of delay and under what circumstance would cause the right to accept to terminate. (This is apparently still the situation for

roads dedicated by means other than a recorded subdivision plan.) One case did find that the passage of 43 years, during which the municipality took no action indicative of acceptance, was too long of a delay and the municipality's right to accept had been terminated. [*Harris v. City of Portland*, 108 A.326, 118 Me. 356 (1919)] A delay of 20 years or less in acceptance has generally been considered to constitute acceptance within a reasonable time.

In addition, the town's acceptance of the dedication cannot be conditional. For example, the town could not vote to accept on the condition that something happen in the future (e.g., that the road would be accepted on the condition that the developer improve the road to town standards first). An attempted conditional acceptance is treated as a lack of acceptance. [*Christ's Church v. Woodward*, 26 Me. 172 (1846)]

In summary, the determination of whether a dedication has been accepted will depend on the facts of each case. The clearest indication of acceptance will be a formal vote of the municipal legislative body taken within a reasonable time of the dedication. Lacking that, acceptance may be found if there is proof of significant levels of public use, within a reasonable time of the offer, continuing for enough years (probably at least twenty years). Public maintenance during that time would be an additional factor which would tend to be indicative of public addeptance.

2. The effect of the 1987 Law

The length of time within which the town may accept a dedication of roads shown on a recorded subdivision plan has been clarified by a 1987 law. [23 MRSA 3031, effective September 29, 1987] The new law applies only to roads which are shown on a recorded subdivision plan and which have not already been accepted prior to September 29, 1987. It states that if a proposed public street laid out in a subdivision plan which is recorded after September 29, 1987 is not accepted by the municipality within twenty years of the date of recording of the plan, the public right to accept terminates. The law also provides that dedicated but unaccepted ways on a subdivision plan recorded prior to September 29, 1987, must be accepted by the town (or county or state) within 15 years after the recording or by September 29, 1997, whichever is later, or the public right to accept terminates. There are provisions by which the town can extend the time it has to accept. [See 23

MRSA Sec. 3032(2)] If the public right to accept lapses under either of these provisions, the public no longer has the ability to create public rights by acceptance of the original dedication. Roads shown on a plan recorded prior to the effective date, if not accepted by the deadline for acceptance, are deemed to have been vacated.

C. Vacation Prior to Acceptance

Vacation is a procedure by which a landowner (or municipality) may seek to have public rights to roads shown on a recorded subdivision plan terminated during that period after the offer of dedication has been made but before the offer has been accepted by the public. It is available only where lots have been sole with reference to the plan. It would be used in a situation where an abutting owner, a person claiming an interest in the land under the road or the municipality wants to eliminate the possibility that the public still has a right to accept a dedication. The petitioner for vacation would be required to pay damages to any abutters harmed by the action. The requirements are specified by statute, as outlined below.

Since the first statute on vacation (effective March 4, 1903) there have been several changes in the statutory provisions regarding vacating proposed roads which appear in an approved subdivision plan. The basic requirement has consistently been that only the municipal officers of the town can vacate roads once lots have been sold by reference to the plan on which the roads appear. However, since July 29, 1976, the statutory law has included a provision which states that in cases where no lot has been sold with reference to the plan, the dedicator himself may revoke the dedication, but *only if* an amended subdivision plan which eliminates the road has been approved by the municipality and recorded in the registry of deeds.

The following brief summaries give a general outline of the several different forms the law has taken. However, the particular statutory sections in effect at the time the action was taken should be consulted for the exact requirements under each law.

From **March 4, 1903 to June 30, 1931** the substantive law is found in the Revised Statutes of Maine, Chapter 23, Section 7 (1903). Under this version of the law, municipal officers could vacate, in

whole or in part, proposed streets not yet accepted and located as public ways if they received a petition from the owners of the fee of the streets. The statute stated that the proceedings were to be the same as in the case of the location of town ways (meaning, that the general form of the action for laying out and acceptance had to be followed, except the issue would be vacation rather than laying out and acceptance). Damages had to be paid by the individual petitioning (owners of the fee in the land) to abutters harmed by the vacation.

From **July 1, 1931 to July 28, 1976** the substantive law is found in the Revised Statues of Maine, Chapter 84, Section 45 (1944). This law kept the exact language of the previous law but added at the end a requirement that the action on the report of the municipal officers had to be filed and made part of the record within ten days of the action. It further provided that the town clerk must furnish an attested copy to anyone upon payment of a fee, and that such an attested copy could be filed in the registry of deeds and need not be acknowledged for the purpose of the record. This provision is basically to provide a means for the owners of the fee in the vacated street to make a record of the vacation in the registry of deeds.

From **July 29, 1976 to April 14, 1982** the substantive law is found in Title 23 of the Maine Revised Statutes Annotated, Section 3027. The law was basically rewritten in 1976. Under this law the municipal officers could vacate a proposed and unaccepted road, in whole or in part, either on petition of any person claiming a property interest in the proposed way or on the municipal officers' own initiative. The procedure was to be the same as in the discontinuance of accepted town ways, except that damages and reasonable costs as determined by the municipal officers were to be paid by the petitioners.

From **April 15, 1982 to the present (June 1, 1989)** the substantive law is found in the Pocket Part Supplement to Title 23 of Maine Revised Statutes Annotated, Section 3027 and 3027-A. Under this law, the municipal officers, after notice to the municipal planning board or office, can vacate proposed and unaccepted ways which appear in recorded subdivision plans either on their own initiative or on petition of any person claiming a property interest in the proposed way. (Between April 15, 1982 and September 29, 1987, the law read "with the approval of" the municipal planning board or office rather than "after notice to.") The statute requires that best practical notice be given to owners of lots on the recorded subdivision plan and it gives a form to which the notice should

substantially conform. The municipal officers must also file an order of vacation containing certain specified items with the municipal clerk. Damages, if any, are to be paid by the petitioners. The statute also provides that the vacation order is to be recorded in the registry of deeds and that the order shall contain a listing of the subdivision lot owners whose names appear in the order. It also contains provisions for rights of action under the new statute and under prior orders under the prior statute.

From the perspective of researching public access, the crucial concept is that no matter when the vacation occurred, if it occurred properly and prior to acceptance, no public rights of passage could be created on the site as a result of later acceptance of the initial dedication. After vacation, the public right to accept the dedication terminates.

Appendix I: Abandonment

One way to lose public rights in a road is through abandonment by non-user. Public responsibility for maintenance is terminated if a road has been abandoned in this way, but so are public rights of use. In contrast under statutory abandonment, the town is relieved of the maintenance responsibility but a public easement for use is retained. These are discussed in more detail below.

A. The Doctrine of the Non-User

Under the common law doctrine of non-user, a public road can be abandoned and all public rights to it can be terminated when a town intentionally stops using it over a period long enough that it appears that there is no longer a public need to keep the road open. The period of intentional non-use required to cause legal abandonment depends upon how the road was created.

1. Public roads created by prescriptive use

Cases have held that where the public road was originally created by prescriptive use, there is a rebuttable presumption of abandonment if it is not used for twenty years. This presumption can be rebutted by evidence showing that the town did not in fact intend to abandon the road. If intentional abandonment for twenty years is found, however, all public rights terminate. [See, e.g., *Piper v. Voorhees*, 130 Me. 305 (1931)]

2. Public roads created by purchase and acceptance, by dedication and acceptance, or by laying out and acceptance

Case law is not clear as to what period of non-user raises a presumption of abandonment of a public road created by purchase and acceptance, laying out and acceptance, or dedication and acceptance. One case did find abandonment based on non-use for over 100 years. [*Smith v. Dickson*, Me. 225 A.2d 631 (1967)] This case held that a road, established by laying out and acceptance, the purpose of which had ended and the use of which had ceased over a century earlier, was abandoned. The court, however, showed considerable reluctance to find abandonment even after so long non-use.

In general the courts seem uncomfortable finding abandonment of roads created by purchase and acceptance, dedication and acceptance, or laying out and acceptance. But obviously at some point, the courts will find abandonment when a town does not use a road for a long enough period of time. One hundred years of non-use was found to be sufficiently long in one case. Fewer years might, in some cases, be found sufficient as well, depending upon the particular facts.

A town can rebut the presumption of abandonment with evidence showing that it did not in fact intend to abandon the road. However, if intentional abandonment is found, all public rights in the road terminate.

B. Statutory Abandonment

Statutory abandonment is based on a 1976 law which, **in addition** to the common law doctrine of non-user, provides a legal mechanism whereby certain rights and responsibilities with regard to public roads may be terminated. [23 MRSA Section 3028] Statutory abandonment, unlike the doctrine of non-user, does not cause all rights to a public road to be terminated. The central effect of statutory abandonment is the termination of the town responsibility to maintain the road. However, the public retains an easement over the road.

The statute refers to this type of abandonment as "discontinued by abandonment." Under the statute, such abandonment occurs if a public road has not been maintained at the expense of the municipality or county for vehicular traffic for thirty of more consecutive years. (When the statute was first enacted, it required lack of maintenance for thirty years "next prior to January 1, 1976." By 1989 amendment, this was changed to be any thirty year period, so that lack of maintenance from 1959 to 1989, for example, would raise the presumption.) Under the statute, such continued lack of town maintenance creates a presumption of abandonment. This presumption of abandonment may be rebutted by evidence that shows a clear intent by the municipality and the public to consider or use the way as if it were a public way. The statute provides that isolated acts of maintenance, in themselves, are not sufficient to rebut the presumption of abandonment; the town's intent is the issue. The road assumes the status of a public easement. The statute also specifically grants the municipality the right at all times to vote to establish the way as an easement for recreational use.

Appendix J:
Discontinuance of Public Ways

A. In General

Discontinuance is a formal method, defined and controlled by statute, by which a town can rid itself of unwanted rights and responsibilities in roads. It can be used to terminate rights and responsibilities in roads created by purchase and acceptance, by laying out and acceptance, by dedication and acceptance, or be prescriptive use. The statutory law controlling discontinuance has undergone several changes during Maine's history, but the basic process has generally remained the following: the town's legislative body votes to discontinue the way; the town pays damages to those injured by discontinuance.

There is one change in the law which should be particularly highlighted here. In 1965 the law was changed to provide that for all discontinuances after September 3, 1965, it is presumed that a public easement over the town way is retained unless the discontinuance specifically provides otherwise. Before that date, there was no such presumption. Thus, for discontinuances passed by a vote taken before September 3, 1965, all public rights (including the public easement) were discontinued unless the town expressly specified that it was retaining an easement.

The exact statutory requirements as they existed at different times in Maine history are laid out in detail, period by period, below.

B. Period-by-Period Statutory Requirements

1. Introduction

To use this outline, the researcher needs to know the date on which the action to discontinue was taken. The researcher should then turn to the section below which includes that date to find the statutory requirements at the time for a legally effective discontinuance.

It should be noted that the **statutory** references given at the end of each period-outline are **not necessarily** to the **only** codification which existed during the period outlined. These references do give the researcher the **first full rendition** of the law for the outlined period. For certain periods, however (as for instance between 1/1/1858 and 9/3/1965), there were several recodifications of the same substantive law. However, no such recodifications made any **substantive** changes in the general law of discontinuance as outlined for the period.

If the records of the town indicate any deviation from the general requirements outlined below for the periods indicated, further reference should be had both to the statutory sections and to the related case law in order to determine in what way the discrepancy may affect the town's claim of ownership.

Please note, however, that even though the **particular** statutory sections outlined in each period below for the general requirements for a discontinuance did not change substantively during that period, it is possible other statutory sections on related topics may have undergone change. For issues not directly covered in this Appendix, the researcher will have to locate the statute and relevant case law in effect on the date that the action was taken. The researcher may wish to seek assistance from a reference librarian at a law library to assist with this research.

2. Period-by-Period Outline of Statutory Requirements

❖ *April 3, 1821 to April 1, 1841*

1. Town may discontinue a public way when it shall appear that such way is unnecessary for the inhabitants of such town. [Note: no provision for automatic retention of any public rights (e.g. an easement) in the absence of specific action to so retain.]

For further reference, see Laws of the State of Maine, 1821, Chapter 118, Section 9.

❖ *April 2, 1841 to December 31, 1857*

1. At town meeting, regularly called for the purpose, town may discontinue any town way.
2. Any damage sustained by any person in their property by the discontinuance of a town way (which fact selectmen shall determine) shall receive such compensation as the selectmen shall determine.

3. Town pays compensation determined by selectmen.

[Note: no provision for automatic retention of any public rights (e.g. an easement) in the absence of specific action to so retain.]

For further reference, see the Revised Statutes of Maine, Chapter 25, Sections 30 and 31 (1841).

❖ ***January 1, 1858 to September 2, 1965***

1. At a town meeting called by warrant containing an article for the purpose town may discontinue town way.
2. Municipal officers shall estimate damages suffered by any person thereby.
3. Damages to be paid by the town.

[Note: no provision for automatic retention of any public rights (e.g. an easement) in the absence of specific action to so retain.]

For further reference, see the Revised Statutes of Maine, Chapter 18, Sections 20 and 21 (1857).

❖ ***September 3, 1965 to July 28, 1976***

1. At a town meeting called by warrant containing an article for the purpose town may discontinue town way in whole or in part.
2. Municipal officers shall estimate damages suffered by any person thereby.
3. Damages to be paid by the town.
4. Discontinuance presumed to relegate the town way to the status of private way (which means that the public can use the way, but the town has no responsibility to maintain it) unless town meeting article specifically states otherwise.

For further reference, see 23 Maine Revised Statutes Annotated, Section 3004 (1964) and Public Laws, 1965, Chapter 270, Section 1.

❖ ***July 29, 1976 to April 14, 1982***

1. Municipal officers give best practicable notice to all abutting property owners and to the municipal planning board or office.

2. Municipal officers files an order of discontinuance with the municipal clerk that specifies the location of the way, the names of abutting property owners and the amount of damages, if any, determined by the municipal officers to be paid to each abutter.
3. Legislative body approves discontinuance order. Public easement is retained unless otherwise stated in the order. All other interests of municipality pass to abutting property owners to center of the way.

For further reference, see 23 Maine Revised Statutes Annotated 3026.

❖ ***April 15, 1982 to Present (June 1, 1989)***

1. Municipal officers give best practicable notice to all abutting property owners and to the municipal planning board or office. "Best practicable notice" means a minimum of mailing notice to abutting property owners whose addresses appear in the municipal assessment records.
2. Municipal officers files an order of discontinuance with the municipal clerk that specifies the location of the way, the names of abutting property owners and the amount of damages, if any, determined by the municipal officers to be paid to each abutter.
3. Legislative body approves discontinuance order. Public easement is retained unless otherwise stated in the order. All other interests of municipality pass to abutting property owners to center of the way.

For further reference, see 1988 Pocket Part Supplement for 23 Maine Revised Statutes Annotated 3026.

Appendix K:
Glossary of Common Terms

Abandonment: As a legal term, in the context of public roads, abandonment refers, at common law, to that period of nonuse sufficient to legally terminate public rights to use the road, and under statutory law to that period of lack of maintenance sufficient to terminate the town's obligation to maintain the road. See Appendix I for a more detailed discussion.

Acceptance: The second and final necessary step in the process by which a town establishes public rights and responsibilities in roads (either in the form of a fee interest or an easement). The acceptance may be of an incipient dedication, an express dedication, a purchase or of a laying out by the town. There are two ways in which acceptance may sometimes occur: by formal vote of the town legislative body, or by town use and maintenance. See Appendix H on dedication and acceptance and Appendix G on laying out and acceptance.

Acknowledgment: A formal declaration made before a notary or attorney by the person who has signed the document. For a deed, it is a recitation that the deed was executed as the person's free act and deed. It is located at the end of the standard deed.

Along (or to, on, by, or at) the Road: In a deed description, this phrase is construed to mean along (or to, on, by, or at) the **centerline of the road** unless the description is specially qualified or a contrary intent is clear from the deed. (Note that private ownership to the centerline of the road does not necessarily defeat public rights of access. The public rights could be based on an easement rather than ownership in fee simple.)

Along (or to, by or at) the South (east, northwest, etc.) side of the Road: This phrase is construed to mean along (or to, by or at) the side of the road. (Note that private ownership to the sides of the road on both sides suggests that the land under the road may well be owned by a public entity (state, county, town) but is not conclusive on the issue of public rights of access.)

Bounded by the Sea (or any tidal water): This phrase is construed to mean to the low water mark or out to 100 rods (1650 feet) from the high water mark, whichever is less. The area between high water and low water, known as the intertidal zone, is, in Maine, subject to the public rights of fishing, fowling and navigating and any other uses "reasonably incidental thereto."

By the Brook (or stream): This phrase is construed to mean to center of the brook or stream (or "thread of the stream" unless a contrary intent is clear from the deed or unless the grantor's land does not extend that far.

Chain of Title: The recorded history of documents which affect the title to a parcel of land, which can go back to the original recorded source of title. A title researcher traces the links in the chain through conveyances, encumbrances, mortgages, liens, etc. to determine whether there are any defects in the chain that affect the strength of the ownership claim of the current record owner.

Cloud on Title: An adverse claim, encumbrance, undischarged mortgage, unreleased lien, defect in a prior deed, etc. which makes clear title to property uncertain. Clouds may be removed by a variety of actions, including quiet title action or by quitclaim deed.

Deed: A written document used by a property owner (grantor) to transfer or convey to a grantee an ownership interest in real property. There are many different types of deeds depending upon the type of grantor, circumstances of the conveyance and covenants made by the grantor. (For a more detailed discussion of warranty deeds, quitclaim deeds with covenant and quitclaim deeds without covenant and how to tell them apart, see Appendix C.)

Discontinuance: A formal method by which a town may discontinue in whole or in part public rights and/or responsibilities in public roads or public easements. See Appendix J.

Easement: A limited property interest which a person or other entity (or the public) holds in land which is owned by another. The holder of an easement has certain limited rights to use or enjoy land owned by another or to keep the owner of the land from using it in a particular way.

The exact nature of those rights will usually be set forth in a deed which creates the easement. There are some easements, however, which are created by operation of law, confirmed in court rather than by deed, such as prescriptive easement and easements by implication.

Fee Simple: The most extensive and complete legal interest in land that one may possess under our law. For practical purposes "fee simple" may be interpreted as meaning absolute ownership, subject only to land use controls such as zoning and building restrictions.

Grantee: The person who receives from the grantor a conveyance of real property or an interest in real property. (It will be the second listed name of the standard deed forms.)

Grantor: The person transferring title to, or an interest in real property. (It will be the first listed name on the standard deed forms.)

Grantor-Grantee Index: A set of record books in the county registry of deeds listing all recorded instruments and the book and page number where they can be found. Some registries maintain separate index books for grantors and for grantees; others combine them into one book. They cover a specified time period (e.g., five years) and list the deeds alphabetically by grantor and/or grantee. For each deed listed, they also list name of grantor, name of grantee, type of instrument, town of the affected real estate, date of recording and book and page where it is recorded.

Laying Out: The first step in the process by which a town may take land by eminent domain for a public way. It involves the town selectmen or their appointees choosing and presenting to the town land which they believe the town should appropriate for a public way. A laying out must be accepted by the town's legislative body before any taking of property interests can occur. See Appendix G on laying out and acceptance.

Plan Books: Large books located at the registry of deeds in which approved subdivision plans, plans of land by licensed land surveyors, early town maps and similar drawings and maps are recorded. (Often copies of plans are kept in file cabinets or on hangers. These are generally easier to use than the huge plan books. See Appendix B for information on each county.) They

are indexed by town, subdivision name and date of recording and frequently are referred to in legal description in deeds. References to them are to "P1. Bk." or "Plan Book" and then a specific page. (Note that regular deeds books are referred to as "Bk" or "Book" and then a specific page.)

Prescriptive Use: A means by which the public may acquire rights to continue to use a piece of property (or in rare cases acquire title in fee simple). For the public to acquire such prescriptive rights the general public must make continuous and uninterrupted use of property for at least twenty years in a manner which is "under a claim of right, adverse to the owner, with his knowledge and acquiescence, or by use so open, notorious, visible and uninterrupted that knowledge and acquiescence will be presumed."

Privately Owned Road: A road owned by a private entity over which the public has no right of passage. Not to be confused with "private way".

Private Way: Under Maine law, this term has the same meaning as "public easement" (see definition, below). It is a road or accessway over which the public has an easement of passage. It should not be confused with a privately owned road in which the public has no rights. However, due to traditionally sloppy use of the term, deed descriptions which use this term should be read skeptically: the intention may have been to refer to a privately owned road. Where possible, the term public easement should be used instead of private way to avoid confusion.

Public Easement: A public easement is an easement over privately owned land for the purpose of public access to land or water not otherwise connected to a public way. A town is not obliged to maintain the road if it is a public easement, but the public has a legal right to use the easement for access. This term has the same meaning as "private way" when the latter is properly used.

Public Road: A public road is an area or strip of land designated and held by a town for the passage of the general public. The town can own the land under the road or can hold an

easement interest in the land. In either case, the town has a legal obligation to maintain the road so long as it remains a public road. "Public road" is the same as "town way."

Quiet Title Action: A court action designed to resolve adverse claims or remove a cloud on the title of property.

Right-of-Way: The right or privilege to pass over a designated portion of land owned by another person. The right can be private (e.g., granted by one neighbor to another) or public (e.g., the public right to use certain streets).

Rod: A measure of length containing 16.5 feet (frequently used in reference to the width of roads laid out by towns and in older property description).

Title Search: An examination of public records to determine if there are any defects in the chain of title. It involves checking back to the original source of title (or some more recent point that has been accepted by title standards as being sufficient to ensure the high probability of clear title) and then "running the title" forward, looking for defects in the links or encumbrances on the chain. (A full title search is a relatively exhaustive search of relevant public records. In most cases, right-of-way researchers will not be conducting full title searches. The emphasis will be on the extent of public rights and geographic limits of private ownership, not on the quality of the private title to privately owned land.)

To (or along) Low Water: This phrase is legally interpreted to mean to (or along) the low water mark or to (or along) a point (or line) 100 rods (1650 ft.) below the high water line, whichever is less. The area between the high and low water, known as the intertidal zone, is, in Maine, subject to the public's rights of fishing, fowling and navigating and other uses "reasonably incidental thereto."

Town Way: See "public road."